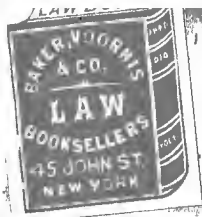
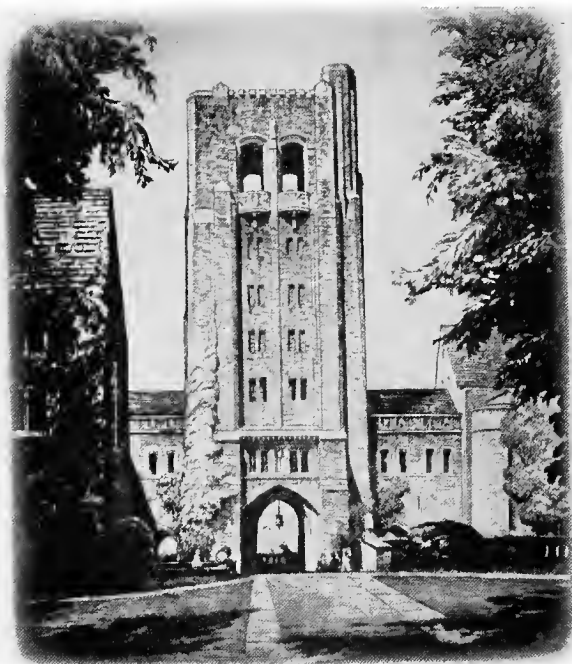


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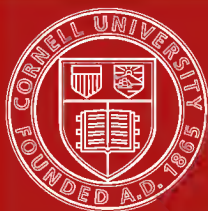
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FROM THE OFFICIAL PORTUGUESE TEXT

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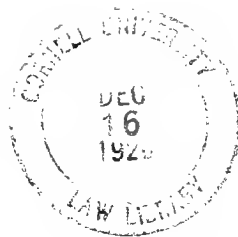
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DEDICATED
TO
MY GOOD FRIEND AND ERUDITE ASSOCIATE
ENRIQUE GIL, Esq.
OF THE
ARGENTINE BAR
IN TOKEN OF ESTEEM AND APPRECIATION.

—J. W.

FOREWORD.

The new Civil Code of Brazil, here presented in translation to lawyers, students of comparative law and business men of English speech, is well worthy of study and of admiration, as the latest as well as ablest expression of scientific law-making in so important a sphere as is the *Corpus Juris Civilis* of a great and law-loving People. "In truth, the Brazilian Civil Code is the greatest monument of juridical codification of America," says the distinguished Jurist, Dr. de Lacerda, in his *Historical and Critical Synthesis* introductory to the new Code. A comparative study of its texts must justify this criticism of the finished production; the long period of time of its elaboration, and the distinguished names of its collaborators, lend a high sanction to this authoritative opinion.

This work of labor and of love is offered to the public, in the hope of its translator, that by giving access to a knowledge of the advanced legal thought and the liberal concepts of civil justice which inspire this work of legislation, it may contribute in a measure to the promotion of the historic ties of friendship and appreciation which have signalized the relations of the United States and Brazil throughout the century of the latter's independence. The importance of the material relations between the peoples of the two great Republics is an added reason for making known to the one the great body of civil laws of the other, which regulate as well the rights of property and business of foreign persons having legitimate interests in Brazil.

Brazil is a country larger than the United States, covers more than half the continent of South America, and its population, according to the new census figures today published, is over 23,000,000, or more than half the population of all South America. It is the law, therefore, which rules the lives and fortunes of the greatest political entity of Latin America, that may be given deserved attention in this volume.

It is proper, and indeed quite necessary for a just appreciation of the present Code, to make known something of its legal antecedents. I shall limit these lines to presenting a brief retrospect of the civil law in Brazil, following an equally brief glimpse at its historical accompaniments. The sources of the data here simply reproduced, are the "Synthesis" of Senator de Lacerda, above mentioned, and the valuable study of Brazilian Legal Bibliography published by my friend Dr. Edwin M. Borchard, Professor of Law, Yale University, and late Law Librarian of Congress, in his "Guide to the Legal Literature of Argentina, Brazil and Chile," Government Printing Office, 1917. But first we may recall the interesting circumstances of how Brazil became Portuguese and the rest of America Spanish, this sketch being culled from a previous unedited work of the present writer.

By a Bull of 1454, Pope Nicholas V. had magnanimously granted to Portugal the exclusive right of explorations, discoveries and conquest "on the road to Mandalay" and the Indies, naturally contemplating only the route around Africa which was then being attempted, and which was afterwards realized by Bartholomeu Diaz in 1487. As soon as the epochal voyage of Columbus for Spain had seemed to demonstrate that India and the East could be reached by way of the West, the consequent conflict of interests became at once apparent. Spain hastened to present her claims, ahead of Portugal, to the Pope, then the infamous Rodrigo Borgia, known in order of apostolic succession as Alexander VI. and himself a native of Spain. He was graciously complaisant, and on May 3, 1493, within six weeks after the return of Columbus, made a "bull" in which, "out of our pure liberality, certain knowledge, and plenitude of apostolic power, and by virtue of the authority of Omnipotent God granted to us in St. Peter, and of the Vicarship of Jesus Christ which we administer upon earth"—he bestowed upon the King and Queen of Spain all lands already discovered or hereafter to be discovered in the Western Ocean.

Portugal instantly protested, and the munificent bestower of continents of which his certain knowledge had certainly been ignorant the day before, was moved to amend his

gratuity. So on the very next day His Holiness made an amended partition of the unknown earth, out of the self-same "*de nostra mera liberalidade et ex certa scientia, ae de apostolicae potestatis plenitudine.*" He naively drew a line from north to south, one hundred leagues west of the Azores and Cape Verde Islands, decreeing that all the lands discovered or to be discovered to the west of that meridian should belong to Spain, anything eastward thereof to Portugal. But as there are about ten degrees of longitude difference between these two groups of islands, the hundred-league-west line of demarcation was confusingly vague, particularly in a document dictated "*ex certa scientia*" by an agency acting "*de apostolicae potestatis plenitudine.*"

To remedy this geographic "bull," the two Powers, the next year, by the Treaty of Tordesillas, June 7, 1494, agreed to shift the line to 370 leagues west of the Cape Verde Islands, a line corresponding to the 50th degree of longitude west of Greenwich, and striking the mainland of South America across the mouth of the Rio Amazon. Thus the great continental projection eastward of this line, now part of Brazil, fell to Portugal and is today of Portuguese speech and traditions; while all of the vast regions to the west became and remained Spanish, and Spain thenceforward claimed the right to exclude all other peoples from settlements or trade "beyond the line."

By reason of this fortuitous land-fall of Brazil to the King of Portugal, its history has differed greatly from that of the Spanish American colonies. Although there were no *Conquistadores* in Brazil, says Dr. Borchard, it was the victim of a backward colonial policy until 1808, when the modern era may be said to have begun. In that year the Prince Regent of Portugal, Dom João, fleeing before Napoleon's troops, landed in Brazil, bringing in his train several thousand Portuguese immigrants. One of his earliest acts was to repeal the laws prohibiting industries and to establish economic instruments and machinery of progress, such as opening the ports to commerce, the institution of banks and printing presses, and other liberal measures.

In 1815 the country was proclaimed as the Kingdom of Brazil. Three years after, Dom João was proclaimed King

of Portugal, and left Brazil under the control of his son Dom Pedro. From this time on political instability prevailed in Brazil. On September 7, 1822, dissatisfaction with the Portuguese domination led to a political uprising, which resulted, on October 12, 1822, in the proclamation of a constitutional monarchy, at the head of which Dom Pedro, who had espoused the Brazilian cause, placed himself. A popular assembly, called in May, 1823, adopted a Constitution on March 25, 1824, which is notable for the frequency with which it was violated. The Emperor proved so unpopular that political opposition compelled him, on April 7, 1831, to abdicate in favor of his son, Dom Pedro II., whose long reign until 1889 marks the gradual development of modern Brazil. The bloodless revolution of 1889, which compelled the abdication of Dom Pedro II. on November 15th of that year, was followed by a provisional Government of some fifteen months.

The Federal Constitution of the United States of Brazil was adopted on February 24, 1891, the twenty previous Provinces being erected into States with far more power than they before possessed, and the City of Rio de Janeiro was set aside in a Federal District as the Capital of the Republic. The Constitution of 1891 is modeled upon that of the United States, the States possessing all legislative power not expressly delegated to the Federal Union, much as in the United States. The Federal Government reserved exclusive jurisdiction to enact Civil and Commercial Codes and laws, to govern throughout the country, and to enact Penal Law for the Federal District. The States have jurisdiction over adjective or procedural law in application of the Civil and Commercial Codes. There is a dual judicial system, Federal and State, closely resembling that of the United States.

The legislation of Brazil in civil matters is based upon the old Portuguese law, which passed from Portugal to the Empire of Brazil and later to the Republic. By a law of October 20, 1823, and Art. 85* of the Constitution of 1891,

* (Reference should be Art. 83, which, however, only reads "*as leis do antigo regimen*"—"the laws of the old system shall continue in force until repealed." I have no opportunity to verify other references.)

the Ordinances of Philip I. (II. of Spain), compiled in 1603, were declared in force in Brazil; and much of this law continued in force until the newly enacted Civil Code took effect on January 1, 1917. The sources of Portuguese Law are the Visigothic Code (cir. 693) and the Decretals of the Councils, the customary law, the *foraes* or municipal charters and statutes, the Roman Law, as found in the Breviary of Alaric and its subsidiary sources, the *Siete Partidas* (1263), the canon law with its later *concordias*, and the general legislation which commenced in 1211. Soon after the Crowns of Spain and Portugal were united in the person of Philip I. in 1580, Philip ordered the revision of the *Ordenações* of Manual (an earlier recopilation), by decree of June 5, 1595. The resulting compilation has received the name *Ordenações Philippinas*, or as it is commonly known, *Codigo Philippino*, promulgated by Philip II. on January 11, 1603, and confirmed by King João IV, by law of January 29, 1643 (after the separation of the Kingdoms). It constitutes the great landmark in the civil law of Brazil, for by the Brazilian law of October 20, 1823, and Art. 85* (see note, *supra*) of the Constitution of 1891, the *Codigo Philippino* has been given the force of law in Brazil, except for such parts as have been repealed; only with the coming into effect of the Civil Code on January 1, 1917, has it gone out of force.

With acknowledgements to Dr. Borchard for the foregoing, we will make a briefer summary of the efforts at codification in Brazil, which resulted in this its first Civil Code, in 1917, as recounted by Dr. de Lacerda. Of the prevailing system, or rather disorder of civil law in Brazil, prior to the Code, he first says: "Brazilian civil law was none other than a variable agglomeration of laws, orders, letters patent, resolutions and regulations, suppressing, repairing or sustaining the *Ordenações do Reino*, venerable antiquated monument, worn down by the action of a long course of uncultured and uncertain jurisprudence, whose high priests recited around it the cold texts of the Digest, read in the twilight glimmer of the Law of Good Reason. Brazil was strangled in the accumulation, ever becoming greater, of a polychrome, confused and contradictory legislation, which had been piling up through the centuries; to find escape

from such mortifying higgie-piggie was one of its most ardent aspirations."

There were four unsuccessful attempts at codification of the Brazilian civil law made before the final effort was crowned with brilliant success. By Decree of December 22, 1858, it was ordered that the Minister of Justice should contract with a jurist of his choice for the preparation of a project for a Civil Code. On January 11, 1859, the work was entrusted to the eminent jurist Teixeira de Freitas, to whom the Imperial Government, on February 15, 1855, had already entrusted the arduous task of consolidation of the civil laws preparatory to the intended codification. The result of the long protracted labors of this jurist was what he himself submitted, not as a project but as a "Sketch," consisting of 4,908 Articles, and even then unfinished, as it left untouched the entire Book III, the very important subject "Of Obligations." The excessive work contributed to unsettle the mind of this, the greatest civilist of South America, and thus the first attempt came to a sad end.

In 1872 the work was entrusted to the Councillor Nabuco de Araujo, the same who, as Minister of Justice in 1859, had contracted it with Dr. de Freitas. The new codifier died shortly afterwards, having drafted but 182 Articles, with no plan outlined for the distribution of the matters to comprise the work. The work carried him unhappily to his grave.

The third attempt was due to Felicio dos Santos, who in 1881 offered to the Imperial Government his "Apointamentos para o Projecto deCodigo Civil Brasileiro." In July of that year, the Minister of Justice, Souza Dantas, appointed a Commission, composed of the principal jurists, to examine these "Apointamentos." This Commission promptly set about its work, and on September 27, presented a report, in which, after censuring severely the serious defects of method followed, or rather, the entire want of method proper for a codification, concluded: "That, as the Apointamentos para o Projecto doCodigo Civil Brasileiro have high merit, as a preparatory work, their author can, by retouching them with art, prepare a project in shape for frank revision; as they stand, they do not afford

sufficient basis." In view of this conclusion, and insisting upon carrying forward the task of codification, the Government ordered the Commission to continue to function, until the author should present a project of the Civil Code; some of the members withdrew, the others never met again. Then Felicio dos Santos, in March, 1882, himself resigned, and at once presented to the Chamber of Deputies a project for a Civil Code. There several members presented a bill approving the work, to the end that it should serve as a Civil Code. Both these projects died, suffocated in the pigeon holes of the Committee on Justice. The work contained 2,962 articles of good doctrine, but wanting in method, although earnestly defended by its author.

The Minister of Justice, in 1889, appointed another Commission to treat the matter. Shortly after it began its work, the Republic was proclaimed, and the Commission considered itself dissolved. The Provisional Government, however, did not leave the great problem forgotten. Indeed, on July 12, 1890, the Department of Justice signed a contract with Coelho Rodrigues, for the preparation of a project of Civil Code within three years. This project was presented in 1893, but was not accepted by the Government. The author then offered it to the Senate, where it led to prolonged debates; finally, the Senate passed a bill authorizing the Government to contract with a jurist or to appoint a Commission of jurists, to revise the work, but this was rejected in the Chamber of Deputies; thus the fourth attempt was defeated.

Finally, the Government of President Campos Salles turned resolutely to the work of endowing the country with a Civil Code, in which work it was aided efficiently by its Minister of Justice, Eptacio Pessoa (now President of Brazil). In January, 1899, one of the most distinguished jurists of Brazil, Clovis Bevilacqua, was commissioned to draft the project which should serve as the basis of the work of codification. In November of that year the project, accompanied by a report, was presented to the Government, and promptly submitted to a Commission composed of distinguished jurists, which, under the presidency of Minister Pessoa, held a long series of meetings, for discussion, arrangement, and final redaction. At last, on

November 10, 1900, it was approved, and presented by the Minister to the President, by whom it was transmitted with a special message to the Congress, on November 17, 1900. The lengthy review of the proceedings in House and Senate, before Committees, Commissions, and under intense debate and frequent deadlock between the two Houses, for over sixteen years, must be passed over. It was finally enacted into law on January 1, 1916, to go into effect January 1, 1917. It was approved and signed by President Wenceslão Braz Pereira Gomes, who offered to the Nation the Brazilian Civil Code, repeating the words of Justinian: *Summa itaque ope et alacri studio has leges nostras accipité.*

JOSEPH WHELESS.

New York City, July 27, 1920.

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FINAL DISPOSITIONS.

THE CIVIL CODE OF THE UNITED STATES OF BRAZIL

INTRODUCTION

Art. 1. The law obligates throughout the Brazilian territory, in its territorial waters, and even in foreign countries, in so far as international principles and conventions recognize its extraterritoriality.

Art. 2. Laws shall go into effect, when they provide no other terms: in the Federal District, three days after they are officially published, fifteen days in the State of Rio de Janeiro, thirty days in the maritime States and in Minas Geraes, one hundred days in the others, including the districts not constituted into States.

In foreign countries they will take effect four months after they are officially published in the Federal Capital.

Art. 3. The law shall not, in any case, prejudice vested rights, perfected juridical acts, or the *res adjudicata*.

§ 1. Rights are considered as vested (*adquiridos*), which the person entitled thereto (*o seu titular*), or anyone for him, may exercise, as are also those, the beginning of exercise of which depends upon a fixed time or pre-established condition, which is unalterable at the will of another.

§ 2. A perfected juridical act is one which is already consummated according to the law in force at the time when it was effected.

§ 3. The thing adjudicated, or adjudged case (*caso julgado*), is the judicial decision against which there is no further recourse.

Art. 4. A law is only revoked or repealed by another law; but a special provision does not repeal a general, nor a general repeal a special, except when it, or its subject, is referred to and explicitly or implicitly altered.

Art. 5. No one is excused by claiming not to know the law; neither by reason of the silence, or obscurity or uncertainty, of the law is a judge excused from rendering judgment or proceeding with a case.

Art. 6. The law which creates exceptions to general rules or restrict rights, embraces only the cases which it specifies.

Art. 7. In cases of omission (*casos omissos*), the provisions concerning analogous cases are applied, and where there are none such, the general principles of law (*direito-jus*).

Art. 8. The national law of the person determines the civil capacity, the rights of family, the personal relations of married persons (*conjuges*), and the regimen of property during marriage, it being lawful, in the latter case, to adopt the Brazilian law.

Art. 9. The law of the domicile, and in default of it, the law of the residence, shall be subsidiarily applied:

I. When the person has no nationality;

II. When two nationalities are attributed to him, by reason of an unsettled conflict between the laws of the country of birth and those of the country of origin; if one of these countries is Brazil, the Brazilian law shall prevail.

Art. 10. Property, movable and immovable, is governed by the law of the place where situated; however, movables for his personal use, or which he has always with him, as well as those intended for transportation to other places, remain under the personal law of the owner.

Single Paragraph. Movables, the situation of which is changed pending a real action affecting them, continue subject to the law of the situation which they had at the beginning of the suit.

Art. 11. The extrinsic form of acts, public or private, is governed by the law of the place in which they are executed.

Art. 12. The means of proof are governed by the law of the place where the act, or fact, which is to be proven took place (*se passou*).

Art. 13. With respect to the substance and the effect of obligations, the law of the place where they were contracted shall govern, unless otherwise stipulated.

Single Paragraph. However, the Brazilian law shall always govern:

I. Contracts made in foreign countries, when they are to be performed in Brazil.

II. Obligations contracted between Brazilians in a foreign country.

III. Acts relative to immovables situated in Brazil.

IV. Acts relative to the Brazilian mortgage system.

Art 14. Intestate (*legítima*) or testamentary succession, the order of inheritance (*ordem de vocação hereditaria*), the rights of heirs, and the intrinsic validity of the provisions of the will, whatever may be the nature of the property or the country where it is situated, subject to the provisions of this Code regarding vacant inheritances (*heranças vagas*) in Brazil, shall be governed by the national law of the deceased; if the latter, however, was married to a Brazilian woman, or has left Brazilian children, they shall be subject to the Brazilian law.

Single Paragraph. The Brazilian consular agents may serve as public officials in the execution and approval of the wills of Brazilians, made in a foreign country, observing the provisions of this Code.

Art. 15. The law of the place where an action is brought governs the jurisdiction (*competencia*), the form of the process, and the means of defense; the Brazilian tribunals being always competent in suits against persons domiciled or resident in Brazil, on account of obligations contracted or responsibilities assumed in this or in another country.

Art. 16. The judgments of foreign courts shall be executed in Brazil, subject to (*mediante*) the conditions which the Brazilian law may prescribe.

Art. 17. The laws, acts and judgments of other countries, as well as private dispositions and agreements, shall not have effect when they offend the national sovereignty, the public order and good customs.

Art. 18. In actions brought before the Brazilian tribunals, the plaintiffs, nationals or foreigners, resident out of the country, or who absent themselves from it during the suit, shall, when required by the defendant, give bond sufficient for the costs, if they have not in Brazil immovable property to secure their payment.

Art. 19. Foreign juridical persons are recognized.

Art. 20. Foreign public corporations cannot acquire or possess by any title, immovable property in Brazil, or rights susceptible of expropriation, except the lots necessary for the establishment of legations or consulates.

Single Paragraph. The by-laws or agreements (*compromissos*) of foreign stock companies for non-economical purposes, depend upon the approval of the Federal Government, in order to operate in Brazil, by themselves or through branches, agencies or establishments which represent them; they are subject to the Brazilian laws and tribunals.

Art. 21. The national law of juridical persons determines their capacity.

GENERAL PART

PRELIMINARY DISPOSITION

Art. 1. This Code governs the rights and obligations of a private order concerning persons, property, and their relations.

BOOK I.

OF PERSONS.

TITLE I.

Of the Division of Persons.

CHAPTER I.

OF NATURAL PERSONS.

Art. 2. Every man is capable of civil rights and obligations (*na ordem civil*).

Art. 3. The law does not distinguish between nationals and foreigners in respect to the acquisition and enjoyment of civil rights.

Art. 4. The civil personality of man commences at his birth with life; but the law protects the rights of the unborn person (*do nascituro*) from his conception.

Art. 5. Those absolutely incapable of exercising personally the acts of civil life, are:

- I. Minors under 16 years.
- II. Insane persons (*loucos*) of all kinds.
- III. Deaf-mutes, who cannot express their will.
- IV. Absentees, declared such by act of the judge.

Art. 6. Those incapable, relatively to certain acts (Art. 147, no. 1), or to the manner of exercising them, are:

- I. Minors over 16 and under 21 years (Arts. 154 to 156).
- II. Married women, while the conjugal society subsists.
- III. Spendthrifts (*prodigos*).
- IV. Savages (*selvícolas*).

Single Paragraph. The savages shall remain subject to the tutelary regimen established by special laws and regulations which shall cease as they become adapted to the civilization of the country.

Art. 7. Incapacity, absolute or relative, is supplied in the manner provided in this Code, Special Part.

Art. 8. The benefit of restitution is not comprised in the protection which the Civil Code confers upon incapables.

Art. 9. Minority ends with the completion of 21 years, the individual being then habilitated for all the acts of civil life.

Single Paragraph. Incapacity, for minors, shall cease:

I. By concession of the father, or if he be dead, of the mother, and by sentence of the judge, after hearing the guardian (*tutor*), if the minor has completed 18 years.

II. By marriage.

III. By the exercise of active public employment.

IV. By the bestowal (*collação*) of a scientific degree in a course of superior study.

V. By the establishment of a civil or commercial business, with one's own means (*economia própria*).

Art. 10. The existence of a natural person terminates with his death. This is presumed, with respect to absentees, in the cases of Arts. 481 and 482.

Art. 11. If two or more persons should decease on the same occasion, it not being possible to determine which of them perished first, they will be presumed to have died simultaneously.

Art. 12. In the public register shall be inscribed:

I. Births, marriages and deaths.

II. Emancipation by act of father or mother, of by sentence of the judge (Art. 9, Single Paragraph, no. I).

III. The interdiction of insane persons, deaf-mutes and spendthrifts.

IV. Sentences declaratory of absence.

CHAPTER II.

OF JURIDICAL PERSONS.

Section I. General Dispositions.

Art. 13. Juridical persons are of public law, internal or external, and of private law.

Art. 14. Juridical persons of internal public law, are:

I. The Union.

II. Each of its States and the Federal District.

III. Each of the Municipalities legally constituted.

Art. 15. Juridical persons of public law are civilly responsible for acts of their representatives who in that capacity cause damages (*damnos*) to third persons, by proceeding in a manner contrary to law or failing in a duty prescribed by law, saving their right over (*salvo o direito regressivo*) against the causers of the damage.

Art. 16. Juridical persons of private law, are:

I. Civil, religious, pious, moral, scientific or literary societies, associations of public utility and endowments (*fundações*).

II. Mercantile societies.

§ 1. The societies mentioned in no. 1 can only be constituted by writing, inscribed in the general register (Art. 20, § 2), and are governed by the provisions in regard to them in this Code, Special Part.

§ 2. Mercantile societies shall continue to be governed by the provisions of the commercial laws.

Art. 17. Juridical persons shall be represented, actively and passively, in their judicial and extra-judicial acts, by the persons designated in their respective by-laws, or, if not so designated, by their directors.

Section II. Of the Civil Register of Juridical Persons.

Art. 18. The legal existence of juridical persons of private law commences with the inscription of their contracts, constitutive acts, by-laws (*estatutos*) or agreements (*compromissos*) in their peculiar register, regulated by special law, or with the authorization or approval of the Government, when required.

Single Paragraph. The alterations which these acts undergo shall be noted in the register.

Art. 19. The register shall declare:

I. The denomination, the purposes, and the location (*sede*) of the association or endowment.

II. The manner in which it is administered and represented, actively and passively, judicially and extra-judicially.

III. Whether its by-laws (*estatutos*), contract or agree-

ment, are subject to amendment in respect to its administration, and in what manner.

IV. Whether the members are liable, or not, subsidiarily, for the social obligations.

V. The conditions of the extinction of the juridical person, and the disposition of its property in that event.

Section III. Of Civil Societies or Associations.

Art. 20. Juridical persons have an existence distinct from that of their members.

§ 1. Societies, agencies or establishments of insurance, *montepio*, and savings-banks, except co-operative, cannot be constituted without previous authorization, and except professional and agricultural syndicates, legally organized.

If these are to operate in the Federal District, or in more than one State, or in territories not constituted into States, the authorization shall be from the Federal Government; if in one State only, from the Government of the latter.

§ 2. The societies enumerated in Art. 16, which, for want of authorization or of registry, are not reputed juridical persons, cannot bring suit against their members, or against third persons; but the latter may hold them responsible for all their acts.

Art. 21. The existence of the juridical person terminates:

I. By its dissolution, determined upon among its members, saving the rights of the minority and of third persons.

II. By its dissolution, when the law so determines.

III. By its dissolution by virtue of an act of Government which withdraws (*que lhe casse*) its authorization to operate, when the juridical person commits acts opposed to its ends or hurtful to the public welfare.

Art. 22. Upon the extinction of an association not formed for profit (*de intuitos não economicos*), the by-laws of which make no provision in regard to the ultimate disposition of its property, and whose members have adopted no efficacious resolution in respect thereto, the social property (*patrimonio*) shall devolve upon a Municipal, State or Federal establishment of identical or similar purposes (*fins*).

Single Paragraph. If there is no such establishment in the Municipality, State, Federal District, or Territory not yet constituted into a State, in which the association had its location (*sede*), the property shall devolve upon the Treasury of the State, of the Federal District, or of the Union.

Art. 23. Upon the extinction of a society formed for profit (*de fins economicos*), the surplus of the social property shall be divided between the members or their heirs.

Section IV. Of Endowments.

Art. 24. In order to create an endowment (*fundação*), its founder shall make to it, by notarial act (*escritura*) or will, a special donation of free property, specifying the purpose for which he destines it, and declaring, if he wishes, the manner of administering it.

Art. 25. When insufficient to constitute an endowment, the property donated shall be converted into titles of the public debt, if the founder did not otherwise dispose, until it is so increased by the income or by new donations, as to provide sufficient capital.

Art. 26. The Public Ministry (*Ministerio Publico*) of the State where situated, shall oversee the endowments.

§ 1. If their activity shall extend to more than one State, this duty belongs to the Ministerio Publico of each of them.

§ 2. The foregoing in regard to States is applied to the Federal District and to Territories not constituted into States.

Art. 27. Those persons to whom the founder entrusts the application of the property shall, immediately upon having knowledge of the trust (*encargo*), formulate, in accordance with their instructions (Art. 24), the by-laws (*estatutos*) of the proposed endowment, and submit them at once for the approval of the competent authority.

Single Paragraph. If the latter should refuse approval, the competent judge in the State, Federal District or Territories, shall supply it, subject to the legal recourses.

Art. 28. In order to alter the by-laws of the endowment, it is necessary (*mistér*) :

I. That the amendment be approved by the absolute majority of those competent to direct and represent the endowment.

II. That it do not conflict with its purposes.

III. That it be approved by the competent authority.

Art. 29. The minority outvoted (*vencida*) in the modification of the by-laws may, within one year, take action to nullify it, before the competent judge, saving the rights of third persons.

Art. 30. If the endowment is found to be harmful (*nociva*), or its maintenance impossible, or the term of its existence have expired, its property, unless otherwise provided in the constitutive act or in the by-laws, shall be incorporated into other endowments devoted to the same or similar purposes.

Single Paragraph. Such inquest (*verificação*) may be initiated judicially by the minority mentioned in Art. 29, or by the Public Ministry.

TITLE II.**Of Civil Domicile.**

Art. 31. The civil domicile of a natural person is the place where he establishes his residence with definite purpose (*animo definitivo*).

Art. 32. If, however, a natural person has several residences where he lives alternately, or various centers of habitual occupations, either one of the former or latter shall be considered his domicile.

Art. 33. The domicile of a natural person, who has no habitual residence (Art. 32), or employs his life in voyages, without a central place of business, shall be held to be the place where he is found.

Art. 34. The domicile is changed by transferring the residence with manifest intention of changing it.

Single Paragraph. Proof of intention results from the declaration of the person who makes the change, to the municipal authorities (*municipalidades*) of the places which he leaves and to which he goes, or if he make no such declaration, from the change itself, with its accompanying circumstances.

Art. 35. The domicile of juridical persons is:

- I. Of the Union, the Federal District.
- II. Of the States, their respective Capitals.
- III. Of the Municipality, the place where the municipal administration functions.
- IV. Of all other juridical persons, the place where their respective directories and administrations function, or which they may select as special domicile in their by-laws or constitutive acts.

§ 1. When the right at issue (*pleiteado*) arose out of a fact which occurred, or out of an act done, or which is to have effect, outside of the Federal District, the Union shall be sued in the judicial district (*secção*) in which the fact occurred, or where the authority from which the act emanated, has its seat (*sede*), or where the act is to be executed.

§ 2. In the States, the local legislation will be observed, with respect to causes of a local nature, arising out of facts occurred, or acts done by their authorities, or which are to be executed, outside of their respective capitals.

§ 3. Where, however, a juridical person has several establishments in different places, each one shall be considered its domicile as to the acts there performed.

§ 4. If the administration or directory has its seat in a foreign country, the domicile of the juridical person, in respect to the obligations contracted by each of its agencies, shall be taken to be the place of the establishment, situated in Brazil, to which it corresponds.

Art. 36. The domicile of incapables is that of their representatives.

Single Paragraph. The married woman has for domicile that of her husband, unless she is divorced (Art. 315), or she is invested with the administration of the household (*casal*) Art. 251).

Art. 37. Public officials are considered as domiciled where they exercise their functions, if not temporary, periodical or of simple commission, for, in these cases, they do not effect a change in the former domicile.

Art. 38. The domicile of the soldier (*militar*) in active service is the place where he serves.

Single Paragraph. Persons holding place in the navy have their domicile in the respective naval stations, or at

the place of the service which they may be discharging, on land.

Art. 39. The domicile of officers and crews of the merchant marine is the place where the ship is matriculated.

Art. 40. The prisoner, or person banished, has his domicile in the place where he is serving his sentence, or banishment. (Art. 80, § 2, No. 2, Federal Constitution.)

Art. 41. The minister or diplomatic agent of Brazil, who, being sued in a foreign country, claims extraterritoriality without designating where he has his domicile in this country, may be sued in the Federal District, or in the last place in Brazilian territory where he had a domicile.

Art. 42. The contracting parties in written contracts may specify a domicile where the rights and obligations resulting therefrom may be exercised and performed.

BOOK II.

OF PROPERTY (BENS)

SINGLE TITLE.

Of the Different Classes of Property.

CHAPTER I.

OF PROPERTY CONSIDERED IN ITSELF.

Section I. Of Immovable Property (Bens Immoveis).

Art. 43. Immovable properties are:

I. The soil with its surface, its natural accessories and appurtenances (*adjacencias*), including the trees and pending fruits, the aerial space and the subsoil.

II. Everything which a man incorporates permanently with the soil, as seeds thrown into the earth, or buildings and constructions, in such way that it cannot be removed without destruction, modification, fracture, or damage.

III. Everything which the proprietor intentionally maintains on the immovable employed in its industrial exploration, beautification, or convenience (*commodidade*).

Art. 44. The following are considered immovables for legal effects :

I. Real rights upon immovables, including agricultural pledges (*penhor agrícola*), and the actions which secure them.

II. Bonds (*apolices*) of the public debt burdened with the clause of inalienability.

III. The right to the open succession.

Art. 45. The property mentioned in Art. 43, no. III, may at any time become personalty (*ser mobilizados*).

Art. 46. Materials temporarily separated from an estate, to be re-employed on it, do not lose their character as immovables.

Section II. Of Movable Property (Bens Moveis).

Art. 47. Movable property is capable of movement by itself, or of removal by outside (*alheia*) force.

Art. 48. For legal effects the following are considered movables :

I. Real rights upon movable objects and the corresponding actions.

II. The rights arising from contract (*de obrigação*) and the respective actions.

III. The rights of an author.

Art. 49. Materials destined for some construction, so

long as they are not employed, retain their character as movables. Those obtained by the demolition of some structure (*predio*) reacquire that character.

Section III. Of Fungible and Consumable Things.

Art. 50. Fungible things are those movables which can, and non-fungible those which cannot, be substituted by others of the same kind, quality and quantity.

Art. 51. Consumable things are those movables, the use of which implies the immediate destruction of their substance; movables intended for sale (*alienação*) are also considered as consumable.

Section IV. Of Things Divisible and Indivisible.

Art. 52. Divisible things are those which can be separated into real and distinct portions, each forming a perfect whole.

Art. 53. Indivisible things are:

I. Property which cannot be separated without alteration in its substance.

II. Things which, although naturally divisible, are considered indivisible by law, or at the will of the parties.

Section V. Of Singular and Collective Things.

Art. 54. Things simple or compound, material or immaterial, are singular or collective:

I. Singular, when, although joined (*reunidas*), they are considered by themselves, independently of the others.

II. Collective, or universal, when they are viewed aggregated in a whole.

Art. 55. In collective things, upon the disappearance of

all the individuals, except one, the collectivity is considered as extinct.

Art. 56. In the collectivity, the respective value is subrogated to the individual, and vice-versa.

Art. 57. The patrimony and the inheritance constitute universal things, or universalities, and as such subsist, although they do not consist of material objects.

CHAPTER II.

OF THINGS (BENS) RECIPROCALLY CONSIDERED.

Art. 58. The principal is the thing which exists in itself (*sobre si*), abstractly or concretely. The accessory, is that the existence of which supposes that of the principal.

Art. 59. Saving special disposition to the contrary, the accessory thing follows the principal.

Art. 60. Fruits, products and incomes (*rendimentos*) belong to the class of accessory things.

Art. 61. Accessories of the soil, are:

I. The organic products of the surface.

II. The minerals contained in the subsoil.

III. Works of permanent adherence, made above or below the surface.

Art. 62. All improvements (*bemfeitorias*), whatever may be their value, are also considered as accessories of the thing, except:

I. The painting with relation to the canvas.

II. The sculpture with relation to the raw material.

III. The writing or any other graphic work, in relation to the prime material which receives it (Art. 614).

Art. 63. The improvements may be for pleasure (*voluptuarias*), useful, or necessary.

§ 1. Voluptuary are those of mere delight or recreation,

which do not increase the habitual use of the thing, although they render it more agreeable or may be of high value.

§ 2. Useful are those which increase or facilitate the use of the thing.

§ 3. Necessary are those which are intended to preserve the thing or prevent its deterioration.

Art. 64. The betterments (*melhoramentos*) which the thing receives without the intervention of the proprietor, possessor or holder (*detentor*), are not considered as improvements (*bemfeitorias*).

CHAPTER III.

OF PUBLIC AND PRIVATE PROPERTY.

Art. 65. Property of national dominion belonging to the Union, to the States, or to the Municipalities, is public. All other is private, to what person soever it may belong.

Art. 66. Public property is:

I. That of the common use of the people, such as the seas, rivers, roads, streets and parks (*praças*).

II. That of special use, such as the buildings or lands devoted to Federal, State or Municipal service or establishment.

III. Dominical property, that is, property which constitutes the patrimony of the Union, of the States, or of the Municipalities, as the object of personal or real rights of each of these entities.

Art. 67. The property mentioned in the preceding Article will only lose the inalienability which is peculiar to it, in the cases and manner which the law may prescribe.

Art. 68. The common use of public property may be gratuitous, or for compensation, according to the laws of

the Union, of the States, or of the Municipality, to whose administration they belong.

CHAPTER IV.

OF THINGS WHICH ARE OUTSIDE OF COMMERCE.

Art. 69. Things outside of commerce are such as are incapable of appropriation, and those legally inalienable.

CHAPTER V.

OF THE PROPERTY OF THE FAMILY.

Art. 70. The heads (*chefes*) of families are permitted to designate an estate (*predio*) as the domicile of the family, with a clause that it shall be exempt from execution for debts, except those which arise from taxes (*impostos*) relative to the estate itself.

Single Paragraph. This exemption shall continue as long as the married couple (*conjuges*) live and until the children attain their majority.

Art. 71. For the exercise of this right it is necessary that the institutors in the act of institution shall have no debts the payment of which may be prejudiced thereby.

Single Paragraph. The exemption relates to debts subsequent to the act, and not to those existing before, if it should be proven that the latter became uncollectible by virtue of the act of institution.

Art. 72. The estate, upon the conditions above stated, cannot be put to any other use, or be alienated, without the consent of the interested persons or of their legal representatives.

Art. 73. The institution shall be made by notarial act (*escriptura*), transcribed in the register of immovables and published in the local press, and in default of this, in the press of the capital of the State.

BOOK III.

OF JURIDICAL FACTS.

PRELIMINARY DISPOSITIONS.

Art. 74. In the acquisition of rights the following rules shall be observed:

I. Rights are acquired through the act of the acquirer, or through another as intermediary.

II. A person can acquire them for himself or for third persons.

III. Rights completely acquired are called actual, and future those whose acquisition has not ceased to operate.

Single Paragraph. The future right is called deferred, when its acquisition depends only upon the will of the subject; not deferred, when it is subordinate to facts or conditions which may defeat it (*fallivies*).

Art. 75. To every right corresponds an action, which secures it (*o assegura*).

Art. 76. In order to bring (*propor*), or to contest an action, it is necessary to have a legitimate economic or moral interest.

Single Paragraph. A moral interest only authorizes the action when it directly affects the author, or his family.

Art. 77. The right perishes, when its object perishes.

Art. 78. The object of the right is understood to perish:

I. When it loses its essential qualities, or its economic value.

II. When it is confounded with another, in such way that it cannot be distinguished.

III. When it is in a place from which it cannot be withdrawn.

Art. 79. If the thing perishes, by reason of a matter outside the will of the owner, the latter shall have an action for damages against the person at fault (*o culpado*).

Art. 80. The owner shall have the like action for losses and damages against the person who, being charged with preserving the thing, lets it perish through negligence; the latter, on his part, has a right of action over (*acção regressiva*) against the third party at fault (*culpado*).

TITLE I.

Of Juridical Acts.

CHAPTER I.

GENERAL PROVISIONS.

Art. 81. Every lawful act, which has for its immediate end to acquire, protect, transfer, modify or extinguish rights, is called a juridical act.

Art. 82. The validity of a juridical act requires a capable agent (Art. 145, no. I), a lawful object and the form prescribed or not forbidden by law (Arts. 129, 130 and 145).

Art. 83. The incapacity of one of the parties cannot be invoked by the other to his own advantage, unless the object of the right or of the common obligation is indivisible.

Art. 84. Persons absolutely incapable shall be represented by their parents, tutors, or curators in all juridical acts; those relatively incapable by the persons and in the acts which this Code determines.

Art. 85. In declarations of will (*vontade*), the intention shall be observed **rather** than the literal sense of the language.

CHAPTER II.

OF THE DEFECTS OF JURIDICAL ACTS.

Section I. Of Error or Ignorance.

Art. 86. Juridical acts may be annulled, when the declaration of will emanates from substantial error.

Art. 87. Substantial error is considered to be that which affects the nature of the act, the principal object of the declaration, or some of the qualities essential to it.

Art. 88. What is said with respect to essential qualities of the person, to whom the declaration of will refers, is also held as substantial error.

Art. 89. The erroneous expression (*transmissão*) of the will (*vontade*) by an instrument, or through an intermediate (*interposta*) person, can be alleged as grounds for nullity in the same cases as the direct declaration.

Art. 90. A false cause only vitiates the act, when it is expressed as the determining reason or in the form of a condition.

Art. 91. Error in the indication of the person, or thing, to which the declaration of will refers, will not vitiate the act, when, by its context and by the circumstances, the thing or person intended, can be identified.

Section II. Of Deceit (Dolo).

Art. 92. Juridical acts may be annulled for deceit (*dolo*), when this was their cause (*a sua causa*).

Art. 93. Accidental deceit obliges only to the satisfaction of the losses and damages. The deceit is accidental, when the act would have been done in spite of it, although in another manner.

Art. 94. In bilateral acts, the intentional silence of one of the parties in respect to a fact or quality of which the other party is ignorant, constitutes a deceitful (*dolosa*) omission, if it is proven that without it the contract would not have been made.

Art. 95. The act may also be annulled for the deceit of a third person, if one of the parties knew it.

Art. 96. The deceit of the representative of one of the parties only obliges the principal to respond civilly to the extent of the profits he received.

Art. 97. If both parties acted with deceit, neither of them can allege it, to annul the act, or to claim indemnity.

Section III. Of Coercion (Coacção).

Art. 98. Coercion (*coacção*), in order to vitiate the manifestation of the will, must be such that it induces in the person affected by it (*paciente*) a founded fear of injury to his person, to his family, or to his property, imminent and equal, at least, to that which he fears from the act extorted.

Art. 99. In determining coercion, the sex, age, condition, health, temperament of the patient, and all other circumstances, which may bear upon its gravity, will be taken into account.

Art. 100. The threat of the normal exercise of a right, or simple reverential fear, is not considered as coercion.

Art. 101. Coercion vitiates the act, even when it is exercised by a third person.

§ 1. If the coercion exercised by a third person was previously known to the party whom it benefits, the latter shall be jointly liable with the former for all the losses and damages.

§ 2. If the party prejudiced by the annulment of the act, did not know of the coercion exercised by the third person, the latter only will respond for the losses and damages.

Section IV. Of Simulation.

Art. 102. Simulation in juridical acts in general exists:

I. When they pretend (*apparentarem*) to confer or to transmit rights to persons other than those to whom really they are conferred or transmitted.

II. When they contain a declaration, admission, condition, or clause which is not true.

III. When private instruments are antedated or postdated.

Art. 103. Simulation will not be considered a defect in any of the cases of the preceding Article, when there was no intention to prejudice third persons, or to violate a provision of the law.

Art. 104. Where there has been an intention to prejudice third persons, or to infringe a precept of law, the contracting parties can allege or demand nothing in suit (*em juízo*) in regard to the simulation of the act in a lawsuit (*litigio*) by one of them against the other, or against third persons.

Art. 105. Third persons injured by the simulation, or the representatives of the public power, can demand the nullity of the simulated acts, on behalf of (*a bem da*) the law, or of the public treasury (*Fazenda*).

Section V. Of Fraud Against Creditors.

Art. 106. Acts of gratuitous conveyance of property, or remission of debt, when made by a debtor already insolvent, or who is thereby reduced to insolvency, may be annulled by the chirographic* creditors as injurious (*lesivos*) to their rights (Art. 109).

Single Paragraph. Only creditors who were such at the time of these acts, may bring suit to annul them.

Art. 107. Onerous contracts of the insolvent debtor may also be annulled, when his insolvency was notorious, or there was reason for it to be known to the other party to such contract.

Art. 108. If the acquirer of the property of the insolvent debtor has not yet paid the price, and this is approximately the current price, he shall release (*desobrigar se*) himself by depositing it in court (*em juízo*), and citing all interested parties by edict.

Art. 109. The action, in the cases of Arts. 106 and 107, may be brought against the insolvent debtor, the person with whom he made the stipulation considered fraudulent, or third persons acquiring the property through bad faith.

Art. 110. The chirographic creditor who receives from the insolvent debtor the payment of a debt not yet due, will be obliged to restore to the estate (*massa*) what he has received.

Art. 111. The securities (*garantias*) for debts which the insolvent debtor has given to any creditor, are presumed fraudulent (*fraudatorias*).

Art. 112. The ordinary transactions (*negocios*) indis-

*A *credor chirographario* is one whose credit is represented by a private writing evidencing the debt, and not secured by mortgage.

pensable to the maintenance of the mercantile, agricultural or industrial establishment of the debtor, are, however, presumed to be in good faith and valid.

Art. 113. When fraudulent acts are annulled, the resulting advantage will revert to the benefit of the estate (*massa*).

Single Paragraph. If the acts revoked had for their only object to create preferential rights, by means of a mortgage, antichresis, or pledge, their nullity will involve only the annulment of the attempted (*ajustada*) preference.

CHAPTER III.

OF THE CONDITIONS (MODALIDADES) OF JURIDICAL ACTS.

Art. 114. The clause which subordinates the effect of the juridical act to a future and uncertain event, is considered a condition.

Art. 115. All conditions, which the law does not expressly forbid, are, in general, lawful. Among forbidden conditions are included those which deprive the act of all effect, or subject it to the will of one of the parties.

Art. 116. Conditions physically impossible, as well as those not to do (*de não fazer*) an impossible thing, are held as non-existent. Those juridically impossible invalidate the acts subordinated to them.

Art. 117. The clause which does not depend (*não derive*) exclusively upon the will of the parties, but arises (*decorra*) necessarily from the nature of the right upon which it depends (*a que accede*), is not considered a condition.

Art. 118. Where the efficacy of the right is subordinated to a precedent (*suspensiva*) condition, so long as this is not fulfilled (*se não verificar*), the right dependent upon it (*a que elle visa*) will not be held as acquired.

Art. 119. If the condition is subsequent (*resolutiva*), so long as this is not fulfilled, the juridical act will remain in effect, and the right established by it may be exercised from the moment of the act; but, when the condition is fulfilled, the right opposed to it is extinguished for all effects.

Single Paragraph. The resolute condition of the obligation may be express or tacit; in the first case it is operative of its own force (*de pleno direito*), and in the second through judicial determination (*interpelação*).

Art. 120. In respect to its juridical effects, the condition is considered fulfilled when its performance (*implemento*) is maliciously prevented by the party to whom it is unfavorable.

On the contrary, the condition is considered not fulfilled which is maliciously carried into effect by the party benefited by its performance.

Art. 121. The party entitled (*o titular do*) to an eventual right in case of suspensive condition, is permitted to exercise the acts designed to preserve it.

Art. 122. If one disposes of a thing upon suspensive condition, and, pending this, makes new dispositions in regard to it, they shall be without effect, upon the fulfillment of the condition, if they are incompatible with it.

Art. 123. The initial term suspends the exercise, but not the acquisition of the right.

Art. 124. To the initial term are applied the provisions of Arts. 121 and 122, in regard to suspensive conditions, and to the final term the provisions of Art. 119 in respect to resolute conditions.

Art. 125. Saving provisions to the contrary, periods of time (*prazos*) are computed by excluding the day of commencement, and including that of maturity.

§ 1. If maturity should fall on a holiday (*dia feriado*), the time will be considered as extended until the following legal day (*dia útil*).

§ 2. The middle of the month (*meiado*) is considered, in any month, its fifteenth day.

§ 3. A month is considered the successive period of thirty completed days.

§ 4. Periods determined by hours are counted from minute to minute.

Art. 126. In wills (*testamentos*) the period (*prazo*) is presumed in favor of the heir, and, in contracts, in favor of the debtor, unless, in respect to the latter, it appears from the tenor of the instrument or from the circumstances, that it was intended for the benefit of the creditor, or of both the contracting parties.

Art. 127. Acts between living persons (*actos entre vivos*), without time (*prazo*), are performable at once, unless the performance is to be done at some other place or depends upon time.

Art. 128. An annexed charge (*encargo*) does not suspend the acquisition or the exercise of the right, except when expressly imposed, in the act, by the grantor (*disponente*), as a suspensive condition.

CHAPTER IV.

OF THE FORM OF JURIDICAL ACTS AND THEIR PROOF.

Art. 129. The validity of declarations of will (*vontade*) do not depend upon a special form, except when the law expressly requires it (Art. 82).

Art. 130. The act is not valid which is not executed

(*revestir*) in the special form required by law (Art. 82), except when the law provides a different penalty for the omission of the required form.

Art. 131. Declarations contained in signed documents are presumed to be true with respect to the signers.

Single Paragraph. Where such enunciative declarations have no direct relation, however, with the principal provisions, or with the legitimacy of the parties, they do not relieve the parties interested in their truth from the burden of proving them.

Art. 132. The consent (*annuencia*), or the authorization, of another person, which is necessary to the validity of an act, shall be proved in the same way as the act, and shall be proven, whenever it is possible, by the instrument itself.

Art. 133. Where a contract is executed with a clause to the effect that it shall not be valid without a public instrument, this is of the substance of the act.

Art. 134. A notarial act (*escriptura publica*) is, moreover, of the substance of the act:

I. In antenuptial agreements and in adoptions.

II. In contracts constituting or transferring real rights upon immovables of a value superior to one *conto de réis* (1,000,000 réis or 10,000\$000), except in agricultural pledges.

Art. 135. A private instrument, made and signed, or only signed, by one who has the free disposition and administration of his property, and subscribed by two witnesses, proves conventional obligations of any value. But its effects, as well as those of the cession, are not operative, in respect to third persons (Art. 1067), before transcription in the public register.

Single Paragraph. Proof of a private instrument may be supplied by other proofs of a legal character.

Art. 136. Juridical acts, for which a special form is not required, may be proven by means of:

I. Admissions (*confissão*).

II. Acts in the records of a court (*processados em juízo*).

III. Public or private documents.

IV. Witnesses.

V. Presumption.

VI. Examinations and inspections (*vistorias*).

VII. Arbitrament.

Art. 137. Textual certified copies of any judicial record (*peça*), of the record (*protocollo*) of hearings (*audiências*), or of any other book in charge of the clerk (*escrivão*), if made (*extrahidas*) by him or under his superintendence, and subscribed by him, as well as the copies of court record (*traslados de autos*), when compared by another clerk, shall be evidence the same as the originals.

Art. 138. The same probative force is had by the copies (*traslados*) and certified copies (*certidões*), made by a public official, of instruments or documents entered (*lançados*) in their records (*notas*).

Art. 139. Copies (*traslados*) though not yet compared, and certified copies (*certidões*), shall be considered public instruments, if their originals have been produced in suit as proof of any act.

Art. 140. Writings of obligation drawn up in a foreign language shall be translated into Portuguese, in order to have legal effect in this country.

Art. 141. Except in express cases, proof exclusively by

witnesses is only admitted in contracts the value of which does not exceed one conto de réis (10,000\$000).

Single Paragraph. Whatever be the value of the contract, proof by witnesses is admissible as subsidiary or complementary to proof in writing.

Art. 142. The following cannot be admitted as witnesses:

I. Insane persons of all kinds.

II. The blind and deaf, when the knowledge of the fact to be proven depends upon the senses which they lack.

III. Minors under 16 years.

IV. The party interested in the object of the litigation, and also the ascendants and descendants, or collaterals, unto the third degree, by consanguinity or affinity, of any of the parties.

V. Spouses.

Art. 143. Ascendants by consanguinity or affinity may be admitted as witnesses in questions involving the birth or the death of children.

Art. 144. No one can be obliged to depose regarding facts which, by reason of his status or profession, he should keep secret.

CHAPTER V.

OF NULLITY.

Art. 145. A juridical act is void (*nulo*):

I. When performed by a person absolutely incapable (Art. 5).

II. When its object is illicit or impossible.

III. When it does not observe the form prescribed by law.

IV. When some solemnity which the law regards as essential to its validity is omitted.

V. When the law expressly declares it void or denies it effect.

Art. 146. The nullity described in the preceding Article may be alleged by any interested person, or by the Public Ministry, whenever it may properly intervene.

Single Paragraph. It must be declared by the judge, when he has cognizance of the act or of its effects and finds them proven, and he is not permitted to suppress them, even at the request of the parties.

Art. 147. A juridical act may be annulled:

I. For the relative incapacity of the agent (Art. 6).

II. For the defect (*vicio*) resulting from error, deceit (*dolo*), coercion, simulation, or fraud (*fraude*) (Arts. 86-113).

Art. 148. A voidable act may be ratified by the parties, saving the rights of third persons.

The ratification relates back (*retroage*) to the date of the act.

Art. 149. The act of ratification must contain the substance of the obligation ratified and the expressed will to ratify it.

Art. 150. Express ratification is excused when the obligation has been already partly performed by the debtor, with knowledge of the defect which affected it.

Art. 151. Express ratification, or the voluntary performance (*execução*) of the voidable obligation, in the terms of Articles 148 to 150, implies the waiver (*renúncia*) of all actions or defenses (*excepções*) which the debtor might have against the act.

Art. 152. The nullities of Art. 147 have no effect before they are declared by judgment (*sentença*), nor can they be

declared *ex officio*. Only the interested parties may plead them, and those only who plead them can take advantage of them, except in case of joint interest (*solidariedade*) or indivisibility.

Single Paragraph. The nullity of the instrument does not involve that of the act, provided that the latter can be proven by other means.

Art. 153. The partial nullity of an act does not prejudice it in the valid part, if this is separable. The nullity of the principal obligation implies that of the accessory obligations, but the nullity of the latter does not involve that of the principal obligation.

Art. 154. Obligations contracted by minors between 16 and 21 years are voidable (Arts. 6 and 84) when they result from acts done by them:

I. Without the authorization of their legitimate representatives (Art. 84).

II. Without the assistance of the curator, where he should intervene in them.

Art. 155. The minor, between 16 and 21 years, can not invoke his age to relieve himself of an obligation, if he deceitfully (*dolosamente*) concealed it when asked by the other party, or if, in the act of creating the obligation, he voluntarily declared himself of age (*maior*).

Art. 156. The minor between 16 and 21 years is equally liable as one of full age (*equipara-se ao maior*) in respect to obligations resulting from illicit acts of which he may be guilty (*culpado*).

Art. 157. No one can recover what he has paid to an incapable on account of an annulled obligation, unless he proves that the amount paid resulted to the benefit of the latter.

Art. 158. When an act is annulled the parties shall be restored to the condition in which they were previously; and if it is not possible to so restore them, they shall be indemnified with an equivalent.

TITLE II.

Of Illicit Acts.

Art. 159. Whoever, by voluntary act or omission, negligence, or imprudence violates a right, or causes prejudice to another, is obliged to repair the damage.

The proof (*verificação*) of the fault (*culpa*) and the measure of damages (*avaliação de responsabilidade*), are governed by the provisions of this Code, Arts. 1518 to 1532 and 1537 to 1553.

Art. 160. The following do not constitute illicit acts:

I. Those done in legitimate defense or in the regular exercise of a recognized right.

II. The deterioration or destruction of the property of another in order to remove an imminent danger (Arts. 1519 and 1520).

Single Paragraph. In the latter case the act will be legitimate only when the circumstances render it absolutely necessary, not exceeding the limits of what is indispensable for the removal of the danger.

TITLE III.

Of Prescription.

CHAPTER I.

GENERAL DISPOSITIONS.

Art. 161. The waiver (*renúncia*) of prescription may be express or tacit, and it will only be effective (*só valerá*)

when made, without prejudice of third persons, after the prescription is consummated.

The waiver is tacit when it is presumed from acts (*factos*) of the interested party incompatible with the prescription.

Art. 162. Prescription may be pleaded, in whatever stage of the cause (*em qualquer instancia*), by the party whom it benefits.

Art. 163. Juridical persons are subject to the effects of prescription and can invoke it whenever it is to their benefit.

Art. 164. Persons whom the law deprives of the administration of their own property have an action over (*regressiva*) against their legal representatives when the latter, through deceit (*dolo*) or negligence allow prescription to run (*derem causa á prescripção*).

Art. 165. Prescription initiated against a person continues to run against his heir.

Art. 166. The judge cannot take cognizance of the prescription of patrimonial rights if it is not invoked by the parties.

Art. 167. Accessory rights prescribe with the principal.

CHAPTER II.

OF THE CAUSES WHICH IMPEDE OR SUSPEND PRESCRIPTION.

Art. 168. Prescription does not run :

I. Between spouses (*conjuges*), during the existence of the marriage.

II. Between ascendants and descendants, during the parental power (*patrio poder*).

III. Between those under guardianship or curatorship and their tutors or curators, during the guardianship or curatorship.

IV. In favor of the pledgee creditor (*credor pignoratício*), of the mandatory, and, in general, of persons in similar relations (*que lhes são equiparadas*), against the depositor, the debtor, the principal (*mandante*) and the persons represented, or their heirs, in respect to the rights and obligations relative to the property entrusted to their care.

Art. 169. Prescription also does not run:

I. Against the incapables mentioned in Art. 5.

II. Against those absent from Brazil in the public service of the Union, of the States, or of the Municipalities.

III. Against those who are serving in the national Navy or Army, in time of war.

Art. 170. Likewise it does not run:

I. Pending a suspensive condition.

II. Before maturity.

III. Pending the action of eviction.

Art. 171. If prescription is suspended in favor of one of the joint creditors (*solidarios*), it only benefits the others if the object of the obligation is indivisible.

CHAPTER III.

OF THE CAUSES WHICH INTERRUPT PRESCRIPTION.

Art. 172. Prescription is interrupted:

I. By personal citation made to the debtor, although ordered by an incompetent judge.

II. By protest, in the conditions of the preceding Number.

III. By the presentation of the evidence of debt (*título de crédito*) in the inventory suit or in the concourse of creditors.

IV. By any judicial act which constitutes the debtor in default (*mora*).

V. By any unequivocal act, although extra-judicial, which implies the acknowledgement (*reconhecimento*) of the right by the debtor.

Art. 173. The interrupted prescription begins to run again from the date of the act which interrupted it, or from the end (*ultimo*) of the proceeding (*processo*) to interrupt it.

Art. 174. In each of the cases of Art. 172, the interruption may be initiated (*promovida*) :

I. By the owner (*proprio titular*) of the right subject to (*em via de*) prescription.

II. By his legal representative.

III. By a third person having a legitimate interest.

Art. 175. Prescription is not interrupted by a citation void because of defect of form, or adjudged invalid (*por circumducta*), or because the instance, or the action, is peremptory.

Art. 176. The interruption of prescription by one creditor does not benefit the others. Likewise the interruption occasioned (*operada*) against a co-debtor, or his heir, does not prejudice the other co-debtors.

§ 1. The interruption, however, started (*aberta*) by one of the joint creditors benefits the other; also the interruption effected against the joint debtor involves the others and their heirs.

§ 2. The interruption occasioned against one of the heirs of a joint debtor does not prejudice the other heirs or debtors, except in respect to indivisible obligations and rights.

§ 3. The interruption produced against the principal debtor prejudices the surety.

CHAPTER IV.

OF THE PERIODS OF PRESCRIPTION.

Art. 177. Personal actions prescribe ordinarily in thirty years, real actions in ten between persons present, and, between those absent, in twenty, counted from the date on which they might have been brought (*propostas*).

Art. 178. The following prescribe :

§ 1. In ten days, counted from the marriage, the action of the husband to annul the marriage with the wife already deflowered (Arts. 218, 219, no. IV and 220).

§ 2. In fifteen days, counted from the delivery (*tradição*) of the thing, the action for abatement of the price of the movable thing received with a redhibitory defect, or to rescind the contract and recover the price paid, with losses and damages.

§ 3. In two months, counted from the birth, if the husband were present, the action of the latter to contest the legitimacy of the child of his wife (Arts. 338 and 344).

§ 4. In three months :

I. The action in the preceding paragraph, if the husband was absent, or the birth was concealed from him; the time counted from the day of his return to the conjugal home, in the first case, and from the date of the knowledge of the fact, in the second.

II. The action of the father, tutor, or curator to annul the marriage of the son, pupil, or ward, contracted without the consent of the former, or without it being granted (*supprimento*) by the judge; the time being counted from the day when they had knowledge of the marriage (Arts. 180, no. XI, 209 and 213).

§ 5. In six months:

I. The action of the spouse coerced to annul the marriage; the time being counted from the day when the coercion ceased (Arts. 183, no. IX and 209).

II. The action to annul the marriage of one incapable of consenting, brought by the latter when he becomes capable, by his legal representatives, or by his heirs; the time counted from the day when the incapacity ceased, in the first case; from the marriage, in the second, and, in the third, from the death of the incapable, when the death occurred during incapacity (Art. 212).

III. The action to annul the marriage of a female minor under 16 years and of a male minor under 18 years; the period being counted from the day that the minor attains such age, if the action is brought by the minor, and from the date of the marriage, when brought by his legal representatives (Arts. 213 to 216), or by the relatives (*parentes*) designated in Art. 190.

IV. The action for abatement of the price of an immovable received with a redhibitory defect, or to rescind a reciprocal (*commutativa*) contract, and recover the price paid, with losses and damages; the time counted from the delivery (*tradição*) of the thing.

V. The action of hotel and inn-keepers, or furnishers of provisions (*viveres*) destined for consumption in the establishment itself, for the price of the accommodations (*hospedagem*) or of the provisions furnished; the time counted from the last payment.

§ 6. In one year:

I. The action of the donor to revoke the gift; the time counted from the day in which he knew of the fact which authorizes him to revoke it (Arts. 1181 to 1187).

II. The action of the assured against the insurer and vice-versa, if the fact which authorizes it occurred in the

country (*paiz*), the time counted from the day that the interested party had knowledge of such fact (Art. 178, § 7, No. V).

III. The action of the child to disencumber and recover (*desobrigar e reivindicar*) immovables belonging to him, alienated or encumbered by the father outside of the cases expressly legal; the time counted from the day on which he attains his majority (Arts. 386 and 388, no. I).

IV. The action of the heirs of the child, in the case of the preceding Number, the time being counted from his death, if the child died a minor; and also that of his legal representative, if the father lost the parental power (*patrio poder*), the time running from the data on which he lost it (Arts. 386 and 388, nos. II and III).

V. The action to annul the partition (*partilha*); the time counted from the date when the judgment of partition became final (Art. 1805).

VI. The action of professors, masters or instructors of science, literature or art, for lessons which they have given, payable by periods not exceeding one month, the time counted from the end of each matured period. (See § 7, No. III, *infra*).

VII. The action of the owners of boarding schools (*casa de pensão*) and places of education or teaching, for the tuition fees (*prestações*) of their boarding-scholars (*pensionistas*), pupils or apprentices; the time counted from the maturity of each one.

VIII. The action of notaries (*tabelliães*) and other court officials, door-keepers and clerks (*porteiros do auditorio e escrevães*), for the costs of the acts which they perform; the time counted from the date of those which are due and unpaid.

IX. The action of physicians, surgeons or pharmacists, for their visits, operations or medicines; the time counted from the date of the last service rendered.

X. The action of lawyers, solicitors, curators, experts (*peritos*) and judicial procurators, for the payment of their fees (*honorarios*); the time counted from the maturity of the contract, from the final decision of the cause, or from the revocation of the mandate.

XI. The action of the proprietor of the diminished (*desfalcado*) estate against the owner of the estate augmented by avulsion, in the terms of Art. 541; the prescriptive term counted from the day when the thing occurred.

XII. The action of the heirs of the child to prove the legitimacy of the filiation; the term counted from the date of his death if he died yet a minor or incapable.

XIII. The action of an adopted person to be released (*desligar-se*) from the adoption, made while he was a minor or was under interdict; the time counted from the day when the minority or interdict ceased.

§ 7. In two years:

I. The action of the spouse (*conjuge*) to annul the marriage in the cases of Art. 219, nos. I, II, and III; the time counted from the date of the celebration of the marriage; and from the date of the taking effect (*execução*) of this Code for marriages previously celebrated.

II. The action of creditors for a debt less than one hundred milréis (100\$000), except those contemplated in nos. VI to VIII of the preceding paragraph; the time counted from their respective maturity, if this is pre-fixed, and, in the contrary case, from the day when it was contracted.

III. The action of professors, masters and instructors of science, literature or art, whose fees are stipulated in periods greater than one month; the time counted from the maturity of the last installment (see § 5, no. VI, *supra*).

IV. The action of engineers, architects, surveyors and stereometrists, for their fees; the time counted from the termination of their work.

V. The action of the assured against the insurer and vice-versa, if the fact which authorizes it occurred outside Brazil; the time counted from the day the interested party knew of this fact (Art. 178, § 6, no. II).

VI. The action of the spouse or his necessary heirs to annul the gift made by the adulterous spouse to his accomplice; the term counted from the date of the dissolution of the conjugal society (Art. 1177).

VII. The action of the husband or of his heirs to annul the acts of the wife done without his consent, or without the supplying thereof by the judge; the time counted from the day of the dissolution of the conjugal society (Arts. 252 and 315).

§ 8. In three years:

The action of the vendor to redeem (*resgatar*) the immovable sold; the time counted from the date of the instrument, when a shorter period is not fixed in the contract (Art. 1141).

§ 9. In four years:

I. Counted from the dissolution of the conjugal society, the action of the wife:

a) To disencumber or recover the immovables of the household (*casal*), when the husband encumbered or alienated them without the wife's consent (*sem outorga uxoria*), or the supplial of it by the judge (Arts. 235 and 237).

b) To annul the bonds given and the gifts made by the husband outside of the legal cases (Arts. 235, nos. III and IV, 236).

c) To recover (*reaver*) from the husband the dowry (Art. 300), or her other properties entrusted to his marital administration (Arts. 233, no. II, 263, nos. VIII and IX, 269, 289, no. I, 300 and 311, no. III).

II. The action of the heirs of the wife, in the cases of

letters a, b and c of the preceding Number, when she died without bringing the action there secured to her; the time counted from the date of her death (Arts. 239, 295, no. II, 300 and 311, no. III).

III. The action of the wife or her heirs to disencumber or recover the dotal properties alienated or encumbered by the husband; the term counted from the dissolution of the conjugal society (Arts. 293 to 296).

IV. The action of the interested party to enforce (*plei-tear*) the exclusion of the heir (Arts. 1595 and 1596), or to prove the cause of his disinheritance (Arts. 1741 to 1745), as well as the action of the disinherited to contest (*impugnar*) it; the term counted from the opening of the succession.

V. The action to annul or rescind contracts, for which no shorter term had been established; the time counted:

a) In case of coercion, from the day when it ceased.

b) In case of error, deceit (*dolo*), simulation or fraud (*fraude*), from the day when the act or contract was done or made (*se realizar*).

c) In respect to the acts of incapables, from the day when the incapacity ceases.

VI. The action of the natural child to set aside (*impugnar*) the acknowledgment; the time counted from the day he attained his majority or was emancipated.

§ 10. In five years:

I. The payment (*prestações*) of alimentary pensions.

II. The payment (*prestações*) of temporary or life incomes (*rendas*).

III. Interest (*juros*), or any other accessory prestations payable annually, or in shorter periods.

IV. The rentals (*alugueres*) of rustic or urban estates (*predio*).

V. The action of servants, operatives and day-laborers, for the payment of their wages.

VI. The passive debts of the Union, of the States and of the Municipalities, as also any and every action against the Federal, State or Municipal Treasury; the term of this prescription running from the date of the act or fact from which such action originated.

The terms of the preceding numbers shall be counted from the day when each prestation, interest, rent or wage was demandable.

VII. Civil actions for violation (*offensa*) of the rights of the author; the term counted from the date of the infringement (*contrafacção*).

VIII. The right to bring a rescissory action.

IX. The action for injury (*offensa*) or damage caused to the right of property; the term counted from the day when such injury or damage was done.

Art. 179. The cases of prescription not provided for in this Code shall be governed, in respect to the time (*prazo*), by Art. 177.

SPECIAL PART

BOOK I.

OF THE RIGHTS OF FAMILY.

TITLE I.

Of Marriage.

CHAPTER I.

OF THE PRELIMINARY FORMALITIES.

Art. 180. The habilitation for marriage is made before the official of the civil register, upon the presentation of the following documents:

I. Certificate of age or equivalent proof.

II. Declaration of status, of domicile and of the present residence of the contracting parties, and of their parents if they are known.

III. Authorization from the persons upon whom they are legally dependent, or the judicial act supplying it (Arts. 183, no. XI, 188 and 196).

IV. Declaration of two witnesses of lawful age, relatives or strangers, testifying that they know the parties and that no impediment exists which impedes their marriage.

V. Certificate of the death of a deceased spouse or of the annulment of the previous marriage.

Single Paragraph. If either of the contracting parties has resided for the greater part of the last year in another

State, he shall present proof that he left it without impediment to marriage, or that an existing impediment has ceased.

Art. 181. Upon view of these documents presented by the parties, or their attorneys-in-fact (*procuradores*), the official of the register shall issue the bans (*proclamas*) of marriage, by means of an edict (*edital*), which shall be affixed during fifteen days in a visible place of the building where marriages are celebrated, and it shall be published in the press, if there be any (Art. 182, Single Paragraph).

§ 1. If, at the expiration of this period, no one appears to interpose an impediment, or if he does not know of any of those which he is bound to declare *ex officio*, the official of the register shall certify to the parties (*pretendientes*) that they are habilitated to marry within the next three months (Art. 192).

§ 2. If the parties (*nubentes*) reside in different districts of the Civil Registry, the publication of the edicts shall be made in each of them.

Art. 182. The registry of the edicts shall be made in the records (*cartorio*) of the official who published them, a certificate being issued to whoever requests it.

Single Paragraph. The competent authority, in case of urgency, may dispense the publication, provided that the documents required by Art. 180 are presented to him.

CHAPTER II.

OF IMPEDIMENTS.

Art. 183. These cannot marry:

I. Ascendants with descendants, whether of legitimate or illegitimate, natural or civil, relationship.

II. Affines in right line, whether by legitimate or illegitimate bond.

III. An adopting parent (*adoptante*) with the spouse of the adopted child, and the adopted with the spouse of the adopter (Art. 376).

IV. Brothers and sisters (*irmãos*), legitimate or illegitimate, by the same father or mother (*germanos*) or not, and collaterals, legitimate or illegitimate, unto the third degree inclusive.

V. The adopted child with the surviving child of the adoptive father or mother (Art. 376).

VI. Persons already married (Art. 203).

VII. The adulterous spouse, with the paramour (*co-réo*), condemned as such.

VIII. The surviving spouse with the accomplice condemned as guilty of homicide, or attempted homicide, against the other consort.

IX. Persons in any manner coerced and those incapable of consenting.

X. The abductor (*raptor*) with the woman abducted, while she is not out of his power and in a safe place.

XI. Those subject to parental power, guardianship, or curatorship, while they have not obtained the consent of the father, tutor or curator, or such consent has not been supplied (Art. 212).

XII. Women minors under 16 years and male minors under 18 years.

XIII. The widower or the widow who has a child by the deceased spouse, so long as the inventory of the marital (*casal*) property has not been made (Art. 225), and partition has not been made to the heirs.

XIV. The widow or the woman whose marriage has been decreed void or has been annulled, until ten months after the widowhood, or the dissolution of the conjugal

society, unless, before the end of said period, she has given birth to a child.

XV. The guardian or curator and his descendants, ascendants, brothers or sisters, brothers or sisters-in-law, or nephews or nieces, with the person under guardianship or curatorship, so long as the guardianship or curatorship has not ceased, and the respective accounts are not settled, except with the paternal or maternal consent manifested in an authentic instrument in writing or in the testament.

XVI. The judge or clerk (*escrivão*) and their descendants, ascendants, brothers or sisters, brothers or sisters-in-law, or nephews or nieces, with an orphan or widow of the territorial district in which either one has exercised his profession, except with the special license of the superior judiciary authority.

Art. 184. The affinity resulting from spurious filiation may be proven by the spontaneous confession of the ascendants of the person impeded; and, if they wish, they shall have the right to make it under judicial secrecy (*em segredo de justiça*).

Single Paragraph. That resulting from natural filiation may also be proven by spontaneous confession of the ascendants, if the proof prescribed in Art. 357 does not exist.

Art. 185. For the marriage of minors under 21 years, being legitimate children, the consent of both parents is necessary.

Art. 186. If they disagree between themselves, the paternal will shall prevail, or, where the couple (*casal*) is separated by divorce or annulment of the marriage, the will of the spouse with whom the children are.

Single Paragraph. If, however, the parents are illegitimate, the consent of the one who has acknowledged the

child will suffice, or, if it be not acknowledged, the maternal consent.

Art. 187. Until the celebration of the marriage the parents, guardians and curators, may retract their consent.

Art. 188. The refusal of consent, when unjust, may be supplied by the judge, with recourse to the superior court (*instancia*).

CHAPTER III.

OF THE INTERPOSING OF IMPEDIMENTS.

Art. 189. The impediments of Art. 183, nos. I to XII, may be interposed (*opostos*):

I. By the official of the civil register.

II. By whoever presides at the celebration of the marriage.

III. By any person of lawful age, who, over his signature, presents a written declaration containing (*instruida com*) the proofs of the fact which he alleges.

Single Paragraph. If he cannot set out (*instruir*) the proofs in the opposition, the opponent shall specify (*precisar*) the place where they exist, or shall name at least two witnesses, residents in the Municipality, who attest the impediment.

Art. 190. The other impediments can only be interposed:

I. By the relatives (*parentes*), in direct line, whether consanguineous or by affinity, of one of the parties (*nubentes*).

II. By the collaterals, to the second degree, whether consanguineous or by affinity.

Art. 191. The official of the civil register shall give to the parties, or their representatives, a copy (*nota*) of the

impediment interposed, setting out the grounds, the proofs, and, if the impediment were not interposed “*ex-officio*,” the name of the opponent.

Single Paragraph. The right is saved to the parties (*nubentes*) to make proof against the impediment, and to bring civil and criminal actions against the person making the opposition (*opponente de má fé*) in bad faith.

CHAPTER IV.

OF THE CELEBRATION OF THE MARRIAGE.

Art. 192. The marriage shall be celebrated on the day, and at the hour and place previously designated by the authority who is to preside at the act, upon the petition of the contracting parties, who shall show themselves habilitated with the certificate required by Art. 181, § 1.

Art. 193. The solemnity shall be celebrated in the house of audiences, with all publicity, the doors open, and there being present at least two witnesses, relatives or not of the parties, or, in case of *vis major*, if the parties wish and the judge consent, in another house, public or private.

Single Paragraph. When the marriage is in a private house, it shall remain with the doors open during the act, and, if either of the parties cannot write, there shall be four witnesses.

Art. 194. The parties being present, in person or by special attorney-in-fact (*produrador*), together with the witnesses and the official of the register, the president of the act, after hearing the affirmation of the contracting parties that they persist in the purpose of marrying by their free and spontaneous will, shall declare the marriage effected in these terms:

“In accordance with the will which you both have just

affirmed before me, to receive each other as husband and wife, I, in the name of the law, declare you married.'"

Art. 195. Immediately after its celebration, the entry shall be made in the book of registry (Art. 202).

In the entry, signed by the president of the act, the spouses, the witnesses and the official of the register, there shall be recorded (*exarados*):

I. The names, surnames, dates of birth, profession, domicile and present residence of the spouses.

II. The names, surnames, dates of birth or of death, domicile and present residence of the parents.

III. The names and surnames of the preceding spouse and the date of dissolution of the former marriage.

IV. The date of the publication of the bans (*proclamas*) and of the celebration of the marriage.

V. The recital (*relação*) of the documents presented to the official of the register (Art. 180).

VI. The names, surnames, profession, domicile and present residence of the witnesses.

VII. The regimen of the marriage, with the declaration of the date and of the notarial officer (*cartorio encujas notas foi passada*) before whom the antenuptial instrument was executed, when the regimen is not that of community (*communhão*) or the legal, established in Title III of this Book, for certain marriages.

Art. 196. The instrument of authorization to marry shall be copied integrally in the antenuptial instrument (*escriptura*).

Art. 197. The celebration of the marriage shall be immediately suspended, if either of the contracting parties:

I. Refuses the solemn affirmation of his will.

II. Declares that it is not free and spontaneous.

III. Declares himself to have repented.

Single Paragraph. The contracting party who, by reason of any of these facts, gives cause for the suspension of the act, shall not be permitted to retract on the same day.

Art. 198. In case of the serious illness (*molestia*) of one of the contracting parties, the president of the act shall go to celebrate it in the house of the party (*o impedido*), and, if urgent, even at night, before four witnesses, who are able to write.

§ 1. The failure or inability (*impedimento*) of the competent authority to preside at the marriage shall be supplied by any of his legal substitutes, and that of the official of the civil register by another “*ad hoc*,” appointed by the president of the act.

§ 2. The loose record (*termo avulso*), which the official “*ad hoc*” makes, shall be carried to the register in the shortest time possible.

Art. 199. The official of the register, under directions (*mediante despacho*) of the competent authority, and in view of the documents required by Art. 180 and independently of the edict of bans (*edital de proclamas*) (Art. 181), shall give the certificate ordered by Art. 181, § 1:

I. When there occurs any urgent motive which justifies the immediate celebration of the marriage.

II. When either of the contracting parties is in imminent danger (*risco*) of his life.

Single Paragraph. In this case, if the parties are unable to secure (*não obtendo*) the presence of the authority whose duty it is to preside at the act, nor of his substitute, they may celebrate it in the presence of six witnesses, who are not related to the contracting parties, in the direct line or collaterally, in the second degree.

Art. 200. These witnesses shall appear within five days

before the nearest judicial authority, requesting that the following declarations be taken of them for record (*por termo*):

I. That they were called in on behalf of the sick party.

II. That the sick party, in their judgment, appeared in danger of life.

III. That in their presence the contracting parties declared freely and spontaneously to receive each other as husband and wife.

§ 1. The request being recorded and the declarations taken, the judge will proceed to the necessary steps (*diligencias*) to ascertain whether the contracting parties could have been habilitated for marriage, in the ordinary form, and shall hear the interested parties, if they so request, within fifteen days.

§ 2. When the competency (*idoneidade*) of the spouses to marry is determined, the competent authority will so decide, with voluntary recourse to the parties.

§ 3. If no recourse is had against the decision, or if it has passed to final judgment notwithstanding the recourses interposed, the judge will order it transcribed in the book of registry of marriages.

§ 4. The entry thus effected will make the effects of the marriage retroactive, in respect to the status of the spouses, to the date of its celebration, and with respect to their common children, to the date of their birth.

§ 5. The formalities of this and of the preceding Article shall be dispensed, if the sick party convalesces and can ratify the marriage in the presence of the competent authority and of the official of the register.

Art. 201. The marriage may be celebrated by power of

attorney containing special powers to the mandatory to receive, in the name of the grantor, the other party.

Single Paragraph. The prisoner, or condemned person, may marry by power of attorney, when he is not permitted by the authority in whose custody he is, to appear in person.

CHAPTER V.

OF THE PROOFS OF MARRIAGE.

Art. 202. The marriage celebrated in Brazil is proven by the certificate of the registry, made at the time of its celebration (Art. 195).

Single Paragraph. The absence (*falta*) or loss of the civil register being shown, any other kind of proof is admissible.

Art. 203. The marriage of persons who deceased in the possession of the status of married cannot be contested in prejudice of their common offspring, except by means of the certificate of the civil register, proving that either of them was already married when he contracted the marriage impugned (Art. 183, no. VI).

Art. 204. The marriage contracted out of Brazil is proven in accordance with the law of the country where it was celebrated.

Single Paragraph. If, however, it was contracted before a consular agent, it shall be proven by a certificate of the entry in the register of the consulate.

Art. 205. When the proof of the legal celebration of the marriage results from judicial process, the inscription of the sentence in the book of the civil register, will produce all civil effects from the date of the marriage, in respect both to the spouses and the children.

Art. 206. In case of doubt between the proofs pro and contra, the judgment will be for the marriage, if the spouses, whose marriage is impugned, live or have lived in possession of the status of married.

CHAPTER VI.

OF VOID AND VOIDABLE MARRIAGES.

Art. 207. The marriage contracted with infraction of any of the numbers I to VIII of Art. 183, is null and of no effect, as regards the contracting parties and as regards their children.

Art. 208. The marriage contracted before an incompetent authority (Arts. 192, 194, 195 and 198), is also void. But this nullity is considered cured, if it is not pleaded within two years from the celebration.

Single Paragraph. Before the expiration of this time, the declaration of nullity may be demanded:

I. By any interested party.

II. By the Public Ministry, unless one of the spouses has already deceased.

Art. 209. The marriage contracted with infraction of any of the numbers IX to XII of Art. 183, is voidable.

Art. 210. The annulment of the marriage contracted by one under coercion or by one incapable of consent, can only be demanded:

I. By the party coerced.

II. By the incapable.

III. By their legal representatives.

Art. 211. One who has contracted marriage while incapable, may ratify it when he acquires the necessary capacity, and this ratification will retroact in its effects to the date of the celebration.

Art. 212. The annulment of the marriage contracted with infraction of no. XI of Article 183 can only be demanded by the persons who had the right of consent and who were not present at the act.

Art. 213. The annulment of the marriage of the minor female under sixteen years and of the minor male under eighteen shall be demanded:

I. By the minor spouse him or herself.

II. By their legal representatives.

III. By the persons designated in Art. 190, in the same order.

Art. 214. The said minors may, however, marry in order to avert the imposition or the execution of a criminal penalty.

Single Paragraph. In such case the judge may order the separation of bodies until the spouses attain legal age.

Art. 215. The marriage followed by pregnancy shall not be annulled for want of age.

Art. 216. When the annulment of the marriage is demanded by third persons (Art. 213, nos. II and III), the spouses may ratify it, upon attaining the age fixed in Art. 183, no. XII, before the judge and the official of the civil register. The ratification will have retroactive effect, the regimen of separation of property prevailing in the meanwhile.

Art. 217. The annulment of the marriage does not affect (*não obsta*) the legitimacy of the child conceived or had before or during it (*na constancia delle*).

Art. 218. The marriage is also voidable, if on the part of one of the parties there was, in consenting, an essential error in respect to the person of the other.

Art. 219. Essential error in respect to the person of the other spouse, is considered :

I. What was said (*o que diz*) with respect to the identity of the other spouse, his honor and good fame, if this error is such (*sendo tal*) that the subsequent knowledge of it renders the life in common unbearable to the deceived spouse.

II. Ignorance of an unbailable (*inafiável*) crime, previous to the marriage and definitively adjudged by a condemnatory sentence.

III. The deflowering of the wife, without knowledge of the husband.

Art. 220. The annulment of the marriage, in the cases of the preceding Article, can only be demanded by the deceived spouse.

Art. 221. Whether voidable, or even void, the marriage, when contracted in good faith by both spouses, produces all its civil effects until the date of the sentence annulling it, both in respect to the parties and to the children.

Single Paragraph. If only one of the spouses acted in good faith in celebrating the marriage, its civil effects shall only benefit such party and the children.

Art. 222. The nullity of the marriage shall be contested (*processar-se-á*) in ordinary action, in which a curator shall be appointed to defend it.

Art. 223. Before bringing the action of nullity of marriage, of annulment, or of divorce (*desquite*), the complainant (*autor*) shall demand, upon presentation of documents authorizing it, the separation of bodies, which shall be granted by the judge in the shortest time possible.

Art. 224. Upon the separation being granted, the wife may ask for provisional support (*alimentos*), which shall be assigned to her, in the form of Article 400.

CHAPTER VII.

PENAL PROVISIONS.

Art. 225. The widower, or the widow, with children of the deceased spouse, who marries before making the inventory of the marital property (*casal*) and making partition to the heirs, shall lose the right to the usufruct of the property of the said children.

Art. 226. In the marriage with infraction of Art. 183, nos. XI to XVI, the regimen of separation of property is obligatory, and the infractor spouse cannot make gifts to the other.

Single Paragraph. The guardian (*tutor*) is considered guilty (*culpado*) who cannot present in his favor the excuse of the final clause of Art. 183, no. XV.

Art. 227. The fine of 100 to 500 milréis, besides the penal responsibility applicable to the case, is incurred by the official of the register:

I. Who publishes the edict of Art. 181 without being requested by both contracting parties.

II. Who gives the certificate of Art. 181, § 1, before the presentation of the documents of Art. 183, or pending the opposition of any impediment.

III. Who does not declare the impediments, the opposition of which is made to him, or the existence of which, when applicable *ex-officio*, is known to him with certainty (Art. 189, no. I).

Art. 228. The same penalties are incurred by the judge:

I. Who celebrates the marriage before the removal of the impediments opposed against either of the parties.

II. Who fails to receive them, when opportunity opposed, in the terms of Arts. 189 to 191.

III. Who refrains from opposing them, when known to him and they are such as are opposed *ex-officio* (Art. 189, no. II).

IV. Who disqualifies himself (*se recusar*) to preside at the marriage, without just cause.

Single Paragraph. It is incumbent upon the interested parties to demand (*promover*) the application of the penalties imposed (*comminadas*) in Arts. 225 and 226. Those of this Article and of Art. 227 shall be demanded by the Public Ministry, and may be demanded by the interested parties.

TITLE II.

Of the Juridical Effects of Marriage.

CHAPTER I.

GENERAL DISPOSITIONS.

Art. 229. Creating the legitimate family, the marriage legitimates the common children born or conceived prior to it (Arts. 352 to 354).

Art. 230. The regimen of property between spouses goes into effect (*começa a vigorar*) from the date of the marriage, and is irrevocable.

Art. 231. The duties of both the spouses are:

- I. Reciprocal fidelity.
- II. Life in common, in the conjugal domicile (Arts. 233, no. IV and 234).
- III. Mutual assistance.
- IV. Support, care and education of the children.

Art. 232. When the marriage is annulled for the fault (*por culpa*) of one of the spouses, the latter shall incur:

I. The loss of all the advantages had from the innocent spouse.

II. The obligation to perform the promises made to the innocent one, in the antenuptial contract (Arts. 256 and 312).

CHAPTER II.

OF THE RIGHTS AND DUTIES OF THE HUSBAND.

Art. 233. The husband is the head (*chefe*) of the conjugal society.

He is entitled to (*compete-lhe*) :

I. The legal representation of the family.

II. The administration of the common property and of the private property of the wife, which the husband is entitled to administer by virtue of the matrimonial regimen adopted, or from the antenuptial pact (Arts. 178, § 9, no. I, c, 274, 289, no. I, 311).

III. The right to fix and to change the domicile of the family (Art. 36).

IV. The right to authorize the profession of the wife and her residence outside of the conjugal roof (Arts. 231, no. II; 242, no. VII; 243 to 245, no. II; 247, no. III).

Art. 234. The obligation to support the wife ceases, for the husband, when she abandons without just reason the conjugal habitation, and refuses to return to it. In this case, the judge may, according to the circumstances, order, for the benefit of the husband and of the children, the temporary sequestration of part of the private income (*rendimentos*) of the wife.

Art. 235. The husband cannot, without the consent of the wife, whatever may be the regimen of the property :

I. Alienate, mortgage or encumber with a real charge (*onus*) the immovable property, or real rights upon the

immovables of other persons (Arts. 178, § 9, no. I, a, 237, 276 and 293).

II. Sue or be sued (*pleitear*), as plaintiff or defendant, in regard to such properties and rights.

III. Give bond (Arts. 178, § 9, no. I, b, and 263, no. X).

IV. Make a gift, not being remuneratory or of small value, of the common properties or income (Art. 178, § 9, no. I, b).

Art. 236. Doweries or wedding gifts are good, however, made to daughters and the gifts made to sons on the occasion of their marriage or the establishment of separate estates (*economia*) (Art. 313).

Art. 237. It is the duty of the judge (*cabe ao juiz*) to supply the consent (*outorga*) of the wife, when she refuses it without just motive, or it is impossible for her to give it (Arts. 235, 238 and 239).

Art. 238. The judicial supplial of the consent (*outorga*) authorizes the act of the husband, but it does not obligate the own property of the wife (Arts. 247, Single Paragraph, 269, 274 and 275).

Art. 239. The annulment of the acts of the husband done without the consent of the wife, or without the supplial of the judge, can only be demanded by her or her heirs (Art. 178, § 9, no. I, a, and no. II).

CHAPTER III.

OF THE RIGHTS AND DUTIES OF THE WIFE.

Art. 240. The wife assumes, by marriage, besides the names (*apellidos*) of the husband, the condition of his companion, consort and help (*auxiliar*) in the burdens (*encargos*) of the family (Art. 324).

Art. 241. If the regimen of property is not that of universal community, the husband will recover from the wife the expenses which he has made in the defense of her private property and rights.

Art. 242. The wife cannot, without the authorization of the husband (Art. 251) :

I. Do the acts which he could not do without the consent of the wife (Art. 235).

II. Alienate, or encumber with a real charge, the immovables of her private ownership (*dominio*), whatever may be the regimen of the property (Arts. 263, nos. II, III, VIII, 269, 275 and 310).

III. Alienate her real rights upon the immovables of another person.

IV. Accept or repudiate an inheritance or legacy.

V. Accept a guardianship, curatorship or other public office or employment (*munus*).

VI. Litigate in civil or commercial suits, except in the cases indicated in Arts. 248 and 251.

VII. Exercise a profession (Art. 233, no. IV).

VIII. Contract obligations, which may involve the alienation of the marital property (*casal*).

IX. Accept mandates (Art. 1299).

Art. 243. The authorization of the husband may be general or special, but it must be evidenced (*constar*) by public instrument or private instrument previously authenticated.

Art. 244. This authorization is revocable at all times, the rights of third persons and the necessary effects of acts initiated being respected.

Art. 245. The marital authorization may be judicially supplied :

I. In the cases of Art. 242, nos. I to V.

II. In the cases of Art. 242, nos. VII and VIII, if the husband does not furnish the means of support to the wife and children.

Single Paragraph. The judicial supplial of authorization validates the acts of the wife, but does not obligate the own property of the husband.

Art. 246. The wife who exercises a lucrative profession, shall have the right to perform all the acts inherent in its exercise and in its defence, as well as to dispose freely of the product of her labor.

Art. 247. The wife is presumed to be authorized by her husband:

I. To purchase, even on credit, the things necessary to the domestic economy.

II. To obtain, by loan, the amount which the acquisition of these things may require.

III. To contract obligations concerning the industry or profession which she exercises with the authorization of the husband, or the supplial of the judge.

Single Paragraph. The wife who occupies a public office or employment (*cargo*), or engages for more than six months in a profession exercised outside of the conjugal home (*lar*), is always considered authorized by the husband.

Art. 248. Independently of authorization, the married woman may:

I. Exercise the right pertaining to her over the persons of children of a former marriage (Art. 329).

II. Disencumber or recover the immovables of the marital estate (*casal*) which the husband may have encumbered or alienated without her consent (*outorga*) or its supplial by the judge (Art. 235, no. I).

III. Annul the bonds or gifts made by the husband with infraction of the provisions of nos. III and IV of Art. 235.

IV. Recover the common movable or immovable property given or transferred by the husband to his concubine (Art. 1177).

Single Paragraph. This right prevails whether or not the wife is in company of the husband, and although the gift is dissimulated as a sale or other contract.

V. Dispose of the property acquired in conformity with the preceding number, and of any other, not being immovable, which she may possess free from the administration of the husband.

VI. Institute such proceedings for her security and bring such suits (*promover os meios assecuratorios e açcozes*) as she may lawfully have (*zue lhe competirem*) against her husband, on account of her dowry or other property subject to his administration (Arts. 263, 269 and 289).

VII. Bring action for the annulment of the marriage (Arts. 207, *et seq.*).

VIII. Bring the action for divorce (*desquite*) (Art. 316).

IX. Demand support (*alimentos*) when due her (Art. 224).

X. Make a testament or dispositions of last will (*von-tade*).

Art. 249. The actions founded on nos. II, III, IV and VI of the preceding Article pertain to the wife and to her heirs.

Art. 250. Except in the case of no. IV of Art. 248, the third person prejudiced by the sentence favorable to the wife, has a right of action over (*direito regressivo*) against the husband or his heirs.

Art. 251. The wife is entitled to the direction and administration of the marital estate (*casal*), when the husband:

- I. Is in a remote or unknown place.
- II. Is in prison for more than two years.
- III. Is judicially declared under interdict.

Single Paragraph. In these cases, the wife is entitled:

- I. To administer the common property.
- II. To dispose of her own private property, and alienate the common movables and the private movables of the husband.

III. To administer the property of the husband.

IV. To alienate the common immovables and those of the husband, upon the special authorization of the judge.

Art. 252. The want of authorization of the husband, when necessary (Art. 242), and not supplied by the judge, will invalidate the act of the wife; this nullity may be pleaded by the other spouse until two years after the conjugal society is terminated.

Single Paragraph. The ratification of the husband, proven by public instrument or private instrument authenticated, revalidates the act.

Art. 253. The acts of the wife authorized by the husband, obligate all the property of the marital estate (*casal*), if the matrimonial regimen is that of community, and only her own private property, if the regimen is otherwise and the husband does not jointly assume the responsibility of the act.

Art. 254. Whatever be the regimen of the marriage, the property of both spouses is equally obligated by the acts which the wife performs in conformity with Art. 247.

Art. 255. The annulment of the acts of one spouse for want of the indispensable consent (*outorga*) of the other,

renders the former liable (*importa ficar o primeiro obrigado*) for the value (*importancia*) of the advantage which may have resulted from the annulled act to him or her (*lhe haja advindo*), to the consort, or to the marital estate (*casal*).

Single Paragraph. When the spouse responsible for the annulled act has no private property sufficient, the damage to third persons acting in good faith shall be settled out of the common property in proportion to the profit which the marital estate received (*na razão do proveito que lucrar o casal*).

TITLE III.

Of the Regimen of Property Between the Spouses.

CHAPTER I.

GENERAL DISPOSITIONS.

Art. 256. It is lawful for the parties (*nubentes*) before the celebration of the marriage, to enter into such stipulations in regard to their property as they deem proper (Arts. 261, 273, 277, 283, 287 and 312).

Single Paragraph. Such agreements (*convenções*) shall be void:

I. If not made by notarial act (*escriptura publica*).

II. If not followed by marriage.

Art. 257. The agreement or clause will be held for nought (*ter-se-á por não escripta*):

I. Which prejudices the conjugal or the paternal rights.

II. Which contravenes an absolute disposition of law.

Art. 258. There being no agreement, or it being void, the regimen of universal community shall prevail among the spouses in respect to their property.

Single Paragraph. The regimen of separation of property is, however, obligatory in the marriage:

I. Of persons who celebrate it with infraction of the enactments of Art. 183, nos. XI and XVI (Art. 216).

II. Of a man over sixty and a woman over fifty years of age.

III. Of the orphan without father and mother, or of the minor, in the terms of Arts. 394 and 395, although he marries, in the terms of Art. 183, no. XI, with the consent of the guardian.

IV. Of all those who are dependent, in order to marry, upon judicial authorization (Arts. 183, no. XI, 384, no. III, 426, no. I, and 453).

Art. 259. Although the regimen be not that of community of property, the principles of such regimen shall apply, if the contract is silent, in respect to the community (*comunicação*) of property acquired during the existence of the marriage.

Art. 260. The husband who is in possession of the private property of the wife, shall be responsible to her and to her heirs:

I. As usufructuary, if the income (*rendimento*) is common (Arts. 262, 265, 271, no. V, and 289, no. II).

II. As attorney-in-fact (*procurador*), if he has a mandate, express or tacit, to administer it (Art. 311).

III. As depository, if he is not usufructuary or administrator (Arts. 269, no. II, 276 and 310).

Art. 261. Antenuptial agreements shall not have effect as against third persons until after they are transcribed, in a special book, by the official of the register of immovables of the domicile of the spouses (Art. 256).

CHAPTER II.

OF THE REGIMEN OF UNIVERSAL COMMUNITY.

Art. 262. The regimen of universal community (*comunhão*) implies the community (*comunicação*) of all the present and future property of the spouses and their passive debts, with the exceptions of the following Articles.

Art. 263. Excluded from the community are:

I. Pensions, half-pay, montepios, service rewards (*tenças*), and other like incomes.

II. Property given or bequeathed with a clause against the community (*incommunicabilidade*), and property subrogated in its place.

III. Property encumbered with a trust (*fideicommisso*) and the right of the heir beneficiary (*fideicommissario*), before the suspensive condition is realized.

IV. The dowry promised or constituted for the child of another marriage.

V. The dowry promised or constituted expressly by one only of the spouses for a common child.

VI. The obligations arising from illicit acts (Arts. 1518 to 1532).

VII. The debts anterior to the marriage, unless they arose for expenses of their preparations (*aprestos*), or resulted in their common profit.

VIII. Antenuptial gifts made by one of the spouses to the other, with the clause against community (Art. 312).

IX. Clothes for personal use, engagement jewelry given before marriage by the husband, professional books and instruments, and family portraits.

X. The bond given by the husband without consent of the wife (Arts. 178, § 9, no. I, b, and 235, no. III).

XI. The property (*bens*) of the necessary inheritance, which is affected by the clause against community. Art. 1723).

Art. 264. The debts not embraced in the two exceptions of no. VII of the preceding Article, can only be paid during the marriage by the property which the debtor spouse brought into the marital estate (*casal*).

Art. 265. The incommunicability of the property enumerated in Art. 263, does not extend to the fruits, when they are received or become due during the marriage.

Art. 266. During the continuance of the conjugal society, the ownership and possession of the property is in common.

Single Paragraph. The wife, however, shall only administer it by authorization of the husband, or in the cases of Art. 248, no. V, and Art. 251.

Art. 267. The community is dissolved:

I. By the death of one of the spouses (Art. 315, no. I).

II. By the sentence which annuls the marriage (Art. 222).

III. By divorce (*desquite*) (Art. 322).

Art. 268. The community being extinguished, and the division of the assets and liabilities (*activo e passivo*) effected, the responsibility of each of the spouses shall cease towards the creditors of the other for debts which the latter had contracted.

CHAPTER III.

OF THE REGIMEN OF PARTIAL COMMUNITY.

Art. 269. When the contracting parties declare that they adopt the regimen of limited or partial community,

or make use of equivalent expressions, it is understood that they exclude from the community:

I. The property which each spouse possessed at marriage, and that which should come to them, during the continuance of the matrimony, by gift or succession.

II. The property acquired with means (*valores*) exclusively belonging to one of the spouses, in subrogation of his own private property.

Art. 270. Likewise are not communicated:

I. Obligations previous to the marriage.

II. Those arising from illicit acts.

Art. 271. Into the community enter:

I. Property acquired during the continuance of the marriage by onerous title, although only in the name of one of the spouses.

II. Property acquired upon some contingency (*facto eventual*), with or without the concurrence (*concurso*) of previous labor or expense.

III. Property acquired by gift, inheritance or legacy, in favor of both spouses (Art. 269, no. I).

IV. The improvements (*bemfeitorias*) to the private property of each spouse.

V. The fruits of the common property, or of the private property of each spouse, received during the continuance of the marriage, or pending at the time the communion of acquired property ceased.

VI. The civil fruits of the labor or industry of each spouse or of both.

Art. 272. The property the acquisition of which is based upon (*tiver por titulo*) a cause anterior to the marriage, is incommunicable.

Art. 273. In the regimen of partial communion, the contracting parties shall state specifically, in the antenu-

tial contract or other public instrument prior to the marriage, the description of the movable property which each one brings into the marital estate (*casal*), under penalty of its being considered as acquired.

Art. 274. The administration of the marital estate (*casal*) pertains to the husband, and the debts contracted by him obligate, not only the common property, but also, in default of this, the private property of both of the spouses, in proportion to the profit which each one has gained.

Art. 275. The disposition of the preceding Article is applicable to the debts contracted by the wife, in the cases in which her acts are authorized by the husband, are presumed to be so authorized, or authorization is unnecessary (Arts. 242 to 244, 247, 248 and 233, no. V).

CHAPTER IV.

OF THE REGIMEN OF SEPARATION.

Art. 276. When the contracting parties marry, stipulating separation of property, that of each spouse shall remain under his or her exclusive administration, who can freely alienate it, if it be movables (Arts. 235, no. I, 242, no. II, and 310).

Art. 277. The wife is obliged to contribute to the expenses of the household (*casal*) with the income of her property, in the proportion of its value relatively to that of the husband, saving stipulation to the contrary in the antenuptial contract (Arts. 256 and 312).

CHAPTER V.

OF THE DOTAL REGIMEN.

Section I. Of the Constitution of the Dowry.

Art. 278. It is of the essence of the dotal regimen to describe and appraise (*estimarem-se*), each by itself, in the antenuptial instrument (Art. 256), the properties which constitute the dowry (*dote*), with express declaration that they are subject to this regimen.

Art. 279. The dowry may be constituted by the intended bride (*nubente*) herself, by any of her ascendants, or by another.

Single Paragraph. All the interested parties shall always intervene in the celebration of the contract, in person or by procurator.

Art. 280. The dowry may embrace, in whole or in part, the present and future property of the wife.

Single Paragraph. The future property, however, is only considered embraced in the dowry, when, upon being acquired by gratuitous title, it is so declared in express clause of the antenuptial pact.

Art. 281. It is not lawful for the married parties to increase the dowry.

Art. 282. The dowry constituted by strangers during the marriage does not alter, in respect to the other property, the pre-established regimen.

Art. 283. It is lawful to stipulate in the antenuptial instrument, for the reversion of the dowry to the giver (*dotator*) upon the dissolution of the conjugal society.

Art. 284. If the dowry were promised by the parents

jointly, without declaration of the part which each contributes, it is understood that each one is obligated for one-half.

Art. 285. When the dowry is constituted by any other person, he will only respond for eviction if he has acted in bad faith, or if his responsibility has been stipulated.

Art. 286. The fruits of the dowry are due from the celebration of the marriage, if no period has been stipulated.

Art. 287. It is permitted to stipulate in the dotal contract:

I. That the wife may receive, directly, for her private expenses, a determined part of the income from the dotal property.

II. That, besides (*a par de*) the dotal property, there may be other property subjected to diverse regimens.

Art. 288. In the dotal regimen, the provisions of this Title, Chapter III (Arts. 269 to 275), are applied to the acquired properties (*aos adquiridos*).

Section II. Of the Rights and Obligations of the Husband in Relation to the Dotal Property.

Art. 289. During the continuance (*vigencia*) of the conjugal society, it is the right of the husband:

I. To administer the dotal property.

II. To receive its fruits.

III. To make use of (*usar de*) the judicial actions to which it gives rise.

Art. 290. Saving express clause to the contrary, the ownership (*dominio*) of the property which constitutes (*sobre que recair*) the dowry, if movables, is presumed

transferred to the husband, and not transferred, if immovables.

Art. 291. The immovable acquired with the value (*importancia*) of the dowry, when this consists of money, shall be considered dotal.

Art. 292. When the dowry implies (*importa*) alienation, the husband shall be considered proprietor, and can dispose of the dotal properties, all risks and advantages which may result being to his account.

Art. 293. The dotal immovables cannot, under penalty of nullity, be encumbered, or alienated, except at public auction sale (*em hasta publica*), and by authorization of the competent judge, in the following cases:

I. If the husband and wife, in accord, wish to endow their common daughters.

II. In case of extreme necessity, in default of other resources for the support of the family.

III. In the case of the first part of § 2 of Art. 299.

IV. For repairs indispensable for the preservation of other immovable dowry property.

V. When it is undivided, with third persons, and the division is impossible or prejudicial.

VI. In case of disappropriation for public utility.

VII. When situated in a place distant from the conjugal domicile, and the convenience of selling it is therefore manifest.

Single Paragraph. In the last three cases, the price shall be applied for other property, which will be subrogated to it.

Art. 294. The judge shall be subsidiarily responsible, who concedes alienation outside the cases and without the formalities of the preceding Article, or who does not make

the proper orders (*providenciar*) for the subrogation of the price, in conformity with the Single Paragraph of the said Article.

Art. 295. The nullity of the alienation may be demanded:

I. By the wife.

II. By her heirs.

Single Paragraph. The recovery (*reivindicação*) of the movables, however, shall only be permitted, if the husband has no property with which he may respond for their value, or if the alienation by the husband and those subsequent between third persons, have been made by gratuitous title or in bad faith.

Art. 296. The husband is obligated for losses and damages to third persons prejudiced by the nullity, if in the contract of alienation (Arts. 293 and 294) the dotal nature of the immovables is not declared.

Art. 297. If the husband has no immovable property, which can be mortgaged as security for the dowry, it can be stipulated in the antenuptial contract for bond (*fiança*) or other security (*caução*).

Art. 298. The right to the dotal immovables does not prescribe during the marriage. But the right to the dowry movables prescribes, upon the responsibility of the husband.

Art. 299. In respect to the passive debts, the following shall be observed:

§ 1. Those of the husband, contracted before or after the marriage, shall not be paid except by his own private property.

§ 2. Those of the wife, anterior to the marriage, shall

be paid by her extra-dotal property, or, in default of this, by the fruits of the dotal property, by the dotal movables, and, in the last case, by the dotal immovables. Those contracted after marriage can only be paid by the extra-dotal property.

§ 3. Those contracted by the husband and wife jointly can be paid, either by the common property, or by the private property of the husband, or by the extra-dotal property.

Section III. Of the Restitution of the Dowry.

Art. 300. The dowry must be restored by the husband to the wife, or to her heirs, within the month which follows the dissolution of the conjugal society, if it can not be restored immediately (Art. 178, § 9, no. I, c, and no. II).

Art. 301. The price of fungible property, or of non-fungible, when legally alienated, can only be demanded six months after the dissolution of the conjugal society.

Art. 302. If the dotal movables have been consumed by ordinary use, the husband shall be obliged to restore only such as remain, and in the condition in which they are at the time of the dissolution of the conjugal society.

Art. 303. The wife can, in all cases, retain the objects of her use, in conformity with the disposition of Art. 263, no. IX, deducting their value from that which the husband must restore.

Art. 304. If the dowry embraced capital or income, which has suffered diminution or eventual depreciation, without the fault of the husband, he shall discharge himself of the obligation of restoring same, upon delivering the respective titles.

Single Paragraph. When, however, it consists of usu-

fruct, the husband or his heirs shall be obliged only to restore the respective title and the fruits received after (*após*) the dissolution of the conjugal society.

Art. 305. The dowry is presumed received:

I. If the marriage has continued (*se tiver prolongado*) for five years after the term established for its delivery.

II. If the wife is the debtor.

Single Paragraph. The right is saved, however, to the husband to prove that he did not receive it, in spite of having demanded it.

Art. 306. Upon the dissolution of the conjugal society, the dotal fruits corresponding to the current year shall be divided between the two spouses, or between the one and the heirs of the other, proportionately to the duration of the marriage, in the course (*decurso*) of the same year.

The years of the marriage are counted from the date of its celebration.

Single Paragraph. In respect to crops obtained in periods greater or less than one year, the division shall be made proportionally to the time of the duration of the conjugal society, within the period of the crop.

Art. 307. The husband has the right to indemnification for the necessary and useful improvements, according to their value at the time of restitution, and he responds for the damage caused by his fault.

Single Paragraph. This right and this obligation are transmitted to his heirs.

Section IV. Of the Separation of the Dowry and Its Administration by the Wife.

Art. 308. The wife can judicially require the separation of the dowry, when the disorder of the business of the husband gives rise to the fear that the property of the latter

is not sufficient to secure her property; saving the right, which the creditors have, to oppose the separation, when fraudulent.

Art. 309. Upon the separation of the dowry, the wife will be held as its administratrix, but it will continue inalienable; and the judge will order (*provendo o juiz*), when he grants the separation, that the securities (*valores*) delivered by the husband in restoration of the dotal property, shall be converted into immovables.

Single Paragraph. The sentence of separation shall be recorded (*averbada*) in the register mentioned in Art. 261, in order to produce effects in relation to third persons.

Section V. Of Paraphernal Property.

Art. 310. The wife preserves the ownership (*propriedade*), the administration, the enjoyment, and the free disposition of the paraphernal property; she cannot, however, alienate the immovables (Art. 276).

Art. 311. If the husband, as procurator constituted to administer the paraphernal or private property of the wife, is dispensated by express clause, from rendering accounts to her, he shall only be obliged to restore the existing fruits:

- I. When she asks him for accounts.
- II. When she revokes the mandate to him.
- III. When the conjugal society is dissolved.

CHAPTER VI.

OF ANTENUPTIAL GIFTS.

Art. 312. Excepting the case of obligatory separation of property (Art. 258, Single Paragraph), the contracting parties are free to stipulate, in the antenuptial instrument,

for reciprocal gifts, or of one to the other, provided that they do not exceed one-half of the property of the donor (Arts. 263, no. VIII, and 232, no. II).

Art. 313. The marriage gifts may also be made by third persons, in the antenuptial contract, or in a notarial act (*escriptura publica*) previous to the marriage.

Art. 314. The gifts stipulated in antenuptial contracts, to take effect after the death of the donor, shall benefit the children of the donee, although the latter should de cease before the former.

Single Paragraph. In the case, however, that the donor survives all the children of the donee, the gift shall lapse (*caducará*).

TITLE IV.

Of the Dissolution of the Conjugal Society and of the Protection of the Person of the Children.

CHAPTER I.

OF THE DISSOLUTION OF THE CONJUGAL SOCIETY.

Art. 315. The conjugal society terminates:

- I. By the death of one of the spouses.
- II. By the nullity or annulment of the marriage.
- III. By divorce (*desquite*), amicable or judicial.

Single Paragraph. The valid marriage is only dissolved by the death of one of the spouses, the presumption established in this Code, Art. 10, second part, not applying to it.

Art. 316. The action of divorce (*desquite*) shall be ordinary, and shall pertain only to the spouses.

Single Paragraph. If, however, the spouse be incapable of exercising it, he or she may be represented by any ascendant, or brother.

Art. 317. The action of divorce (*desquite*) can only be founded on some of the following motives:

- I. Adultery.
- II. Attempt to cause death (*tentativa de morte*).
- III. Ill treatment (*sevicia*), or serious insult (*injuria grave*).
- IV. Voluntary abandonment of the conjugal home (*lar*), during two continuous years.

Art. 318. Divorce shall also be granted by the mutual consent of the spouses, if they were married for more than two years, such consent being manifested before the judge and duly approved (*homologado*).

Art. 319. Adultery shall cease to be a motive for divorce:

I. If the plaintiff has connived (*concorrido*) with the defendant to commit it.

II. If the innocent spouse has forgiven it.

Single Paragraph. The adultery is presumed forgiven, when the innocent spouse, knowing it, cohabits with the guilty one.

Art. 320. In judicial divorce, if the wife is innocent and poor, the husband must provide her the alimentary pension, which the judge fixes.

Art. 321. The judge will also fix the quota which the guilty spouse, or both, if both are guilty, must contribute for the raising and education of the children.

Art. 322. The sentence of divorce authorizes the separation of the spouses, and puts an end to the matrimonial regimen of the property, as if the marriage were dissolved (Art. 267).

Art. 323. Whatever be the cause of the divorce, and the

manner in which it is made, it is lawful for the spouses at all times to re-establish the conjugal society, in the terms in which it was constituted, provided that they do it, by regular act, before a competent judge (*em juízo*).

Single Paragraph. The reconciliation shall in no way prejudice the rights of third persons, acquired during or after the divorce, whatever be the regimen of property.

Art. 324. The woman condemned in the action of divorce (*desquite*), loses the right to use the name of the husband (Art. 240).

CHAPTER II.

OF THE PROTECTION OF THE PERSON OF THE CHILDREN.

Art. 325. In case of dissolution of the conjugal society by amicable divorce, such agreement as the spouses make in regard to the custody (*guarda*) of the children, shall be observed.

Art. 326. When the divorce is judicial, the minor children shall remain with the innocent spouse.

§ 1. If both are guilty, the mother shall have the right to keep the daughters in her company while they are minors, and the sons until they are six years of age.

§ 2. The sons older than six years shall be delivered into the custody of the father.

Art. 327. There being grave motives, the judge may, in any case, for the good of the children, regulate their situation with respect to their parents, in a different manner from that established in the preceding Articles.

Single Paragraph. If all the children belong to one only of the spouses, the judge will fix the amount which the other shall contribute to their support.

Art. 328. In case of the annulment of the marriage, there being common children, the provisions of Arts. 326 and 327 shall be observed.

Art. 329. The mother, who contracts new nuptials, does not lose the right to have the children with her; they can only be taken from her, by order of the judge, upon proof that she, or the step-father, does not treat them properly (Arts. 248, no. I and 393).

TITLE V.

Of the Relations of Relationship (*Parentesco*).

CHAPTER I.

GENERAL DISPOSITIONS.

Art. 330. Relations (*parentes*) in direct line are persons who are in the relation, the ones with the others, of ascendants and descendants.

Art. 331. Relations (*parentes*) in collateral or transverse line, to the sixth degree, are persons who derive (*provêm*) from a single trunk, without descending the one from the other.

Art. 332. Relationship is legitimate, or illegitimate, according as it proceeds, or not, from marriage; natural, or civil, according as it results from consanguinity, or adoption.

Art. 333. In the direct line, the degrees of relationship are counted by the number of generations, and in the collateral also by the number of them, counting up (*subindo*), however, from one of the relatives (*parentes*) to the common ascendant, and then down to the other relative.

Art. 334. Each spouse is related (*alliado*) to the relations of the other by the bond (*vinculo*) of affinity.

Art. 335. Affinity, in the direct line, is not extinguished with the dissolution of the marriage which originated it.

Art. 336. Adoption establishes merely civil relationship between the adopter (*adoptante*) and the adopted (Art. 376).

CHAPTER II.

OF LEGITIMATE FILIATION.

Art. 337. Children conceived during the existence (*na constancia*) of the marriage are legitimate, although it is annulled (Art. 217), or even void, if it was contracted in good faith (Art. 221).

Art. 338. Presumed as conceived during the existence of the marriage, are:

I. Children born one hundred and eighty days, at least, after the conjugal cohabitation (*convivencia*) is established (Art. 339).

II. Those born within three hundred days subsequent to the dissolution of the conjugal society by death, divorce, or annulment.

Art. 339. The legitimacy of the child born before the expiration (*decorridos*) of the one hundred and eighty days mentioned in no. I of the preceding Article, cannot, however, be contested:

I. If the husband before marriage had knowledge of the pregnancy of the wife.

II. If he attended (*assistiu*), personally, or by procurator, at the making of the record of the birth of the child, without contesting his paternity.

Art. 340. The legitimacy of the child conceived during

the existence of the marriage, or what is presumed as marriage (Arts. 337 and 338), can only be contested, by proof.

I. That the husband was physically impossibilitated from cohabiting with the wife in the first hundred and twenty-one days, or more, of the three hundred which preceded the birth of the child.

II. That at that time the spouses were legally separated.

Art. 341. The ground (*motivo*) of the preceding Article, no. II, will not avail (*não valerá*) if the spouses have lived together (*convivido*) some day under the conjugal roof.

Art. 342. Only when impotence is absolute, can its allegation avail against the legitimacy of the child.

Art. 343. The adultery of the wife, with whom the husband lived under the same roof, does not suffice to overcome (*illidir*) the legal presumption of the legitimacy of the offspring.

Art. 344. The right of contesting the legitimacy of children born of his wife pertains exclusively (*cabe privativamente*) to the husband (Art. 178, § 3).

Art. 345. The action treated of in the preceding Article, when once initiated, passes to the heirs of the husband.

Art. 346. The maternal confession does not suffice to exclude the paternity.

Art. 347. Legitimate filiation is proven by the certificate of the record of birth, inscribed in the civil register.

Art. 348. No one can claim (*vindicar*) a status contrary to what is shown by (*ao que resulta do*) the register of birth.

Art. 349. In default or defect of the record of birth, legitimate filiation can be proven by any means admissible in law:

I. When there is a beginning (*começo*) of proof in writing, coming from the parents, jointly or separately.

II. When there exist strong (*vehementes*) presumptions resulting from facts already certain.

Art. 350. The action of proof of legitimate filiation pertains to the child, while he lives, passing to his heirs, if he should die a minor, or incapable.

Art. 351. If the action had been initiated by the child, his heirs can continue it, unless the plaintiff desisted, or his legal recourse were lost by lapse of time (*ou a instancia foi perempta*).

CHAPTER III.

OF LEGITIMATION.

Art. 352. Legitimated children are equal (*equiparados*) to legitimates.

Art. 353. Legitimation results from the marriage of the parents, after the child is conceived or born (Art. 229).

Art. 354. The legitimation of children deceased benefits their descendants.

CHAPTER IV.

OF THE ACKNOWLEDGEMENT OF ILLEGITIMATE CHILDREN.

Art. 355. The illegitimate child can be acknowledged (*reconhecido*) by the parents, jointly or separately.

Art. 356. When the maternity appears from the record of the birth of the child, the mother can only contest it by proving the falsity of the record (*termo*), or of the declarations therein contained.

Art. 357. The voluntary acknowledgement of the illegitimate child can be made either in the record of birth itself,

or by means of a notarial act (*escriptura publica*), or by testament (Art. 184, Single Paragraph).

Single Paragraph. The acknowledgment may precede the birth of the child, or succeed its decease, if he left descendants.

Art. 358. Incestuous and adulterine children cannot be acknowledged.

Art. 359. The illegitimate child, acknowledged by one of the spouses, cannot live in the conjugal home (*lar*) without the consent of the other.

Art. 360. The acknowledged child, while a minor, shall remain under the power of the progenitor who acknowledged it, and if both acknowledge it, under the power of the father.

Art. 361. The acknowledgment of the child cannot be subordinated to conditions or to terms.

Art. 362. The child of full age (*maior*) cannot be acknowledged without his own consent, and the minor can impugn the acknowledgment, within the four years which follow his majority or emancipation.

Art. 363. The illegitimate children of persons who do not come within (*nao caibam*) Art. 183, nos. I to IV, have an action against the parents, or their heirs, to demand the acknowledgement of filiation:

I. If at the time of conception the mother was living in concubinage (*concubinata com*) with the pretended father.

II. If the conception of the claimant child coincided with the rape (*rapto*) of the mother by the supposed father, or his sexual relations with her.

III. If there exists a writing of the man (*daquelle*) to

whom the paternity is attributed, expressly acknowledging it.

Art. 364. The investigation of the maternity only is not permitted, when its purpose (*tenha por fim*) is to attribute illegitimate offspring to a married woman, or incestuous offspring to an unmarried woman (*solteira*).

Art. 365. Any person, having a just interest, may contest the action of investigation of paternity or maternity.

Art. 366. The sentence which adjudges as properly instituted (*procedente*) the action of investigation, will produce the same effects of (*do*) acknowledgement; it may, however, order that the child be raised and educated away from (*fóra de*) the company of that one of the parents who denied this relationship (*qualidade*).

Art. 367. Paternal and maternal filiation may result from a marriage declared void, although without the conditions of the putative marriage.

CHAPTER V.

OF ADOPTION.

Art. 368. Only persons older (*maiores*) than fifty years, without legitimate or legitimated offspring, can adopt.

Art. 369. The adopter (*adoptante*) must be at least eighteen years older than the adopted (*adoptado*).

Art. 370. No one can be adopted by two persons, unless they are husband and wife.

Art. 371. Until they have rendered accounts of their administration and settled the balance, the guardian or curator cannot marry his ward (*pupillo ou curatelado*).

Art. 372. A minor, or interdict, cannot be adopted with-

out the consent of the person under whose care (*guarda*) he is.

Art. 373. The adopted, when a minor or interdict, may free himself (*desligar-se*) from the adoption during the year next following (*immediato ao*) that in which the interdiction or minority ceases.

Art. 374. The bond (*vinculo*) of adoption is also dissolved:

I. When the two parties agree.

II. When the adopted shows ingratitude against the adopter.

Art. 375. The adoption shall be made by notarial act (*escriptura publica*) in which conditions or terms (*nem termo*) are not admitted.

Art. 376. The relationship resulting from adoption (Art. 336) is limited to the adopter and the adopted, except in respect to matrimonial impediments, in which respect the provisions of Art. 183, nos. III and V shall be observed.

Art. 377. The adoption will produce its effects although children may come to the adopter, unless by the fact of birth, it is proven that the child was conceived at the time of the adoption.

Art. 378. The rights and duties which result from natural relationship are not extinguished by the adoption, except the paternal power (*patrio poder*), which will be transferred from the natural father to the adoptive.

CHAPTER VI.

OF THE PARENTAL POWER (PATRIO PODER).

Section I. General Dispositions.

Art. 379. Legitimate, legitimated, acknowledged, and adoptive children are subject to the paternal power (*patrio poder*) while minors.

Art. 380. During the marriage, the father, as chief of the family (Art. 233), exercises the paternal power, and in his case of his default (*falta*) or impediment, the wife.

Art. 381. Divorce does not alter the relations between the parents and children, except as respects the right, which pertains to the former, to have the latter in their company (Arts. 326 and 327).

Art. 382. Upon the dissolution of the marriage by the death of one of the spouses, the paternal power belongs to the surviving spouse.

Art. 383. The illegitimate child not acknowledged by the father, remains under the maternal power. If, however, the mother is not known, or is not capable of exercising the paternal power, a guardian will be given to the minor.

Section II. Of the Patrio Poder With Respect to the Person of the Children.

Art. 384. With respect to the person of the minor children, the parents (*paes*) have the right:

- I. To direct their raising and education.
- II. To have them in their company and custody.
- III. To grant or deny consent to their marriage.
- IV. To appoint a guardian for them, by testament or

authentic document, if the other parent does not survive, or the survivor cannot exercise the *patrio poder*.

V. To represent them until 16 years of age, in the acts of civil life, and assist them, after that age, in the acts to which they are parties, by supplying their consent.

VI. To reclaim them from whoever illegally detains them.

VII. To demand their obedience, respect, and services appropriate to their age and condition.

Section III. Of the Patrio Poder With Respect to the Property of the Children.

Art. 385. The father, and in his default, the mother, are the legal administrators of the property of the children who are under their power, saving the provisions of Art. 225.

Art. 386. They cannot, however, alienate, mortgage, or encumber with real onus the immovables of the children, nor contract in their name obligations which exceed the limits of simple administration, except through necessity, or for the evident advantage (*utilidade*) of the offspring, upon (*mediante*) the previous authorization of the judge (Art. 178, § 6, no. III).

Art. 387. Whenever in the exercise of the *patrio poder*, the interests of the parents conflict with those of the child, the judge, at the request of the child or of the Ministerio Publico, shall appoint a special curator for the child.

Art. 388. The right to plead (*oppor*) the nullity of the acts done in violation of the preceding Articles, belongs only to:

I. The child (Art. 178, § 6, no. III).

II. His heirs (Art. 178, § 6, no. IV).

III. The legal representative of the child, if the *patrio*

poder ceases during his minority (Arts. 178, § 6, no. IV, and 392).

Art. 389. The usufruct of the property of the children is inherent in the exercise of the *patrio poder*, saving the provisions of Art. 225.

Art. 390. Excepted are :

I. Property left or given to the child with exclusion of the paternal usufruct.

II. Property left to the child, for a certain and determined purpose (*fin*).

Art. 391. Excluded from the usufruct as well as from the administration of the parents, are :

I. Property acquired by the illegitimate child, before acknowledgment.

II. Property acquired by the child in military service, magistracy, or in any other public function.

III. Property left or given to the child upon condition of not being administered by the parents.

IV. Property pertaining to the child in the inheritance (Art. 1599), when the parents are excluded from the succession (Art. 1602).

Section IV. Of the Suspension and Extinction of the Patrio Poder.

Art. 392. The *patrio poder* is extinguished :

I. By the death of the parents or of the child.

II. By emancipation, in the terms of the Single Paragraph of Art. 9, General Part.

III. By majority.

IV. By adoption.

Art. 393. The mother who contracts new nuptials, loses, with respect to the children of the former marriage (*leito*),

the rights of the *patrio poder* (Art. 329) ; but, if she again becomes a widow (*enviudando*), she recovers them.

Art. 394. If the father, or mother, abuses the *patrio poder*, failing in the paternal duties, or wasting (*arruinando*) the property of the child, it is the duty (*cabe ao*) of the judge, upon the request of any relative, or of the Ministerio Publico, to adopt such measures as seem to him required for the security of the minor and of his property, and to suspend the *patrio poder* for such time as he deems proper.

Single Paragraph. The exercise of the *patrio poder* is also suspended to the father or mother condemned by final (*irrecorrivel*) sentence for a crime the penalty for which exceeds two years of prison (*prisão*).

Art. 395. By judicial act, the father, or mother, shall lose the *patrio poder* :

- I. Who punishes the child immoderately.
- II. Who leaves it in abandon.
- III. Who practices acts contrary to morals and good customs.

CHAPTER VII.

OF SUPPORT (ALIMENTOS).

Art. 396. In accordance with the provisions of this Chapter, relatives (*parentes*) may demand of one another the aliments which they may need for their support (*para subsistir*).

Art. 397. The right to be provided with support (*prestação de alimentos*) is reciprocal between parents and children, and extends (*extensivo*) to all ascendants, the obligation resting upon the nearest in degree, upon the default of the others (*uns em falta de outros*).

Art. 398. In default of ascendants, the obligation rests upon the descendants, observing the order of succession, and in default of the latter, upon brothers and sisters (*irmãos*), either of the whole or half blood (*assim germanos, como unilateraes*).

Art. 399. The aliments are due when the relative who claims them, has no property and cannot, by his own labor, provide for his maintenance, and the relative of whom they are claimed can furnish them without diminution (*desfalque*) of what is necessary for his own support.

Art. 400. Aliments should be fixed in proportion to the necessities of the claimant and to the resources of the person obligated.

Art. 401. If, after the aliments are fixed, there should come about (*sobrevier*) a change in the fortune of him who supplies them, or in that of him who receives them, the interested party may require of the judge, according to the circumstances, exoneration, reduction or aggravation of the charge.

Art. 402. The obligation to provide (*prestar*) aliments is not transmitted to the heirs of the debtor.

Art. 403. The person obligated to supply aliments can pension the recipient (*alimentando*), or give him board and lodging (*hospedagem e sustento*) at home (*em casa*).

Single Paragraph. The judge may, however, if the circumstances require, fix the manner of prestation to be observed (*devida*).

Art. 404. The right to aliments cannot be renounced, but it need not be exercised (*pode-se deixar de exercer*).

Art. 405. Marriage, although void, and spurious filiation, whether proven by final sentence not invoked by the

child, or by confession, or written declaration of the father, make the paternity certain only for the effect of the prestation of aliments.

TITLE VI.

Of Guardianship, Curatorship and Absence.

CHAPTER I.

OF GUARDIANSHIP (TUTELA).

Section I. Of Guardians (Tutores).

Art. 406. Minor children are placed in guardianship (*tutela*):

I. When the parents are deceased, or adjudged absent.

II. When the parents lose (*decaindo do*) the *patrio poder*.

Art. 407. The right to name the guardian (*tutor*) pertains to the father, to the mother, to the paternal and to the maternal grand-parent (*avo*). Each one of these persons will exercise it in the event of the default or incapacity of those which precede them in the order here established.

Single Paragraph. The appointment must appear (*deve constar*) by testament, or by any other authentic document.

Art. 408. The appointment of guardian by the father, or by the mother, who at the time of death did not have the *patrio poder*, is void.

Art. 409. In default of a guardian appointed by the parents, the guardianship devolves upon (*incumbe a*) the consanguineous relatives of the minor, in this order:

I. Upon the paternal grandfather, then upon the maternal grandfather, and in default of the latter, upon the paternal or maternal grandmother.

II. Upon the brothers and sisters (*irmãos*), those of

whole blood (*os bilateraes*) being preferred to those of half blood (*os unilateraes*), the brothers being preferred to the sisters; the elder to the younger.

III. Upon the uncles and aunts, the former being preferred to the latter, and the elder to the younger.

Art. 410. The judge shall appoint a fit and proper (*idoneo*) guardian, resident in the domicile of the minor:

I. In default of a testamentary, or legitimate, guardian.

II. When the latter were excluded or excused from the guardianship.

III. When the legitimate and the testamentary guardian are removed as not being fit and proper (*idoneos*).

Art. 411. A single guardian will be given to orphan brothers and sisters (*irmãos*). In the event, however, that more than one is appointed by testamentary disposition, it is understood that the guardianship is entrusted to the first, and that the others are to succeed him in order of their naming, in the event of death, incapacity, excuse, or any other legal impediment.

Single Paragraph. Whoever institutes a minor as his heir or legatee, may appoint for him a special curator of the property left, although the minor may be under the *patrio poder* or under guardianship.

Art. 412. Minors abandoned shall have guardians appointed by the judge, or shall be gathered into public establishments destined to this purpose.

In default of such establishments, they shall be under the guardianship of the persons who, voluntarily and gratuitously, may take upon themselves the charge of raising them.

Section II. Of Those Incapable to Exercise Guardianship.

Art. 413. The following cannot be guardians, and shall be removed from guardianship, if they exercise it:

I. Those who have not the free administration of their property.

II. Those who, at the time of assuming the guardianship, are under some obligation to the minor, or have some rights to enforce against him; and those whose parents, children, or spouses have a demand against the minor.

III. The enemies of the minor, or of his parents, or who have been by the latter excluded from the guardianship.

IV. Those condemned for the crime of theft, robbery, fraud (*estellionato*), or falsity, whether or not they have complied with the penalty.

V. Persons of evil behavior (*procedimento*), or wanting in probity, and those guilty of abuse of former guardianships.

VI. Those who exercise a public function incompatible with the good administration of the guardianship.

Section III. Of the Excuse of Guardianship.

Art. 414. The following may excuse themselves from guardianship:

I. Women.

II. Persons over seventy years of age.

III. Those who have more than five children under their power.

IV. Those impossibilitated by sickness.

V. Those living far from the place where the guardianship has to be exercised.

VI. Those who already exercise a guardianship or curatorship.

VII. Soldiers in service.

Art. 415. One who is not a relative of the minor cannot be obliged to accept the guardianship, if there is in the place a fit and proper (*idoneo*) relative, by consanguinity or affinity, in condition to exercise it.

Art. 416. The excuse must be presented within ten days after notice (*intimação*) to the person appointed, under penalty of being considered to have renounced the right to plead it.

If the reason for the excuse (*motivo excusatorio*) occurred after the acceptance of the guardianship, the ten days shall be counted from the day when it occurred.

Art. 417. If the judge does not admit the excuse, the appointee shall exercise the guardianship, until the recourse interposed is disposed of (*emquanto não tiver provimento*), and he shall respond at once (*desde logo*) for the losses and damages which the minor may suffer.

Section IV. Of the Guaranty of Guardianship.

Art. 418. The guardian, before assuming the guardianship, is obliged to specify, in a legal mortgage, which shall be inscribed, the necessary immovables as security (*para acautelar*) for the property of the minor, under his administration.

Art. 419. If all the immovables belonging to him are not worth the patrimony of the minor, the guardian shall supplement (*reforçará*) the mortgage by real or personal (*real ou fidejussoria*) bond; unless he has no means to do so, or is of recognized fitness (*idoneidade*).

Art. 420. The judge responds subsidiarily for any damages (*pelos prejuizos*) which the minor may suffer by reason of the insolvency of the guardian, for not having required of him the legal guaranty, or for not having removed him, as soon as he became suspected.

Art. 421. The responsibility shall be personal and direct, when the judge has not appointed a guardian, or when the appointment has not been opportune.

Section V. Of the Exercise of Guardianship.

Art. 422. It is incumbent upon the guardian, under the inspection of the judge, to govern (*reger*) the person of the minor, to watch over him and to administer his property.

Art. 423. The property of the minor shall be delivered to the guardian, upon making (*mediante*) an itemized record (*termo especificado*) of the property and its value, although the parents may have dispensed it.

Art. 424. It is the duty (*cabe ao*) of the guardian, with respect to the person of the minor:

I. To direct his education, to defend him, and to furnish him aliments, according to his means and condition.

II. To demand that the judge shall make such orders as may be for his good, when the minor is in need of correction.

Art. 425. If the minor possesses property, he shall be supported and educated at his own expense, the judge determining the amounts which seem to him necessary for such purpose, having regard to the income of the ward's fortune, when the father or the mother have not fixed them.

Art. 426. It is also the duty of the guardian:

I. To represent the minor, until he is sixteen years of age, in the acts of civil life, and to assist him, after that age, in the acts to which he is a party, by supplying his consent (*supprindo-lhe o consentimento*).

II. To receive the income and pensions of the minor.

III. To provide him (*fazer-lhe*) with the expenses of support and education, as well as those of the administration of his property (Art. 433, no. I).

IV. To alienate the property of the minor intended for sale.

Art. 427. It is also his duty, with the authorization of the judge:

I. To provide the necessary expenses for the preservation and improvement of the property.

II. To receive the amounts due to the orphan and to pay his debts.

III. To accept for him inheritances, legacies, or gifts, with or without charges (*encargos*).

IV. To compromise (*transigir*).

V. To lease his real property, by means of public bidding (*mediante praça publica*).

VI. To sell at public sale (*em praça*) his movables, the preservation of which is not desirable (*não convier*), and his immovables, in the cases in which it is permitted (Art. 429).

VII. To bring suit in all actions and take all measures (*promover todas as diligencias*) for the good of the minor, as well as to defend him in the suits brought against him, according to the provisions of Art. 84.

Art. 428. Although with judicial authorization, the guardian cannot, under penalty of nullity:

I. Acquire for himself, or through a third (*interposta*) person, the movable or real property belonging to the minor, by private contract or at public auction.

II. Dispose of the property of the minor by gratuitous title.

III. Constitute himself the grantee of a credit or right against the minor.

Art. 429. The immovables belonging to minors can only be sold, when there is manifest advantage, and always at public auction (*em hasta publica*).

Art. 430. Before assuming the guardianship, the guardian shall declare all that the minor may owe him, under

penalty of not being able to collect from him while he exercises the guardianship, unless he proves that he did not know of the debt when he assumed it.

Art. 431. The guardian responds for the damage (*prejuizos*) which he may cause the ward, through negligence, fault (*culpa*) or deceit (*dolo*); but he has the right to be paid for what he legally expends in the exercise of the guardianship, and, except in the case of Art. 412, to receive compensation (*uma gratificação*) for his work.

Single Paragraph. If the parents of the minor have not fixed this compensation, the judge will determine it, up to ten per cent, at the maximum, of the net annual income of the property administered by the guardian.

Section VI. Of the Property of Orphans.

Art. 432. Guardians cannot keep in their possession money of their wards, beyond what is necessary for the ordinary expenses of their support, education and the administration of their property.

§ 1. Objects of gold, silver, precious stones, and unnecessary movables, shall be sold at public auction, and their proceeds converted into bonds (*titulos de responsabilidade*) of the Union or of the States, deposited (*recolhido*) in the Federal Savings Banks (*Caixas Economicas*), or applied in the acquisition of immovables, according as may be determined by the judge. Money arising from any other source shall be applied in the same way.

§ 2. Guardians respond for delay in the application of the above-mentioned sums (*valores*), paying the legal interest from the day on which they should have so applied them; but this does not relieve them from the obligation, which the judge will enforce, of making such application.

Art. 433. The amounts (*valores*) existing in the Federal Savings Banks, in the form of the preceding Article, cannot be retired, except by order of the judge, and only:

I. For the expenses of the support and education of the ward, and the administration of his property (Art. 427, no. I).

II. To buy real property and titles of the public debt of the Union or of the States.

III. To be employed in accordance with the provisions made by the person who has given or left it.

IV. To be delivered to the orphans, when emancipated or attained their majority, or when they are dead, to their heirs.

Section VII. Of the Rendition of Guardianship Accounts.

Art. 434. Guardians are obliged to render accounts of their administration, although the parents of the wards should otherwise direct.

Art. 435. At the end of each year of administration, guardians shall submit to the judge the proper statement of accounts (*balance*), which, after being approved, shall be annexed to the records (*autos*) of the inventory.

Art. 436. Guardians shall render accounts every two years, and also when, for any motive, they cease to exercise the guardianship, and whenever the judge deems it proper (*conveniente*).

Single Paragraph. The accounts shall be rendered in court (*em juízo*), and shall be passed upon (*julgadas*) after hearing the interested parties; the guardian shall immediately deposit the balances in savings banks, or acquire immovables, or titles of the public debt.

Art. 437. Upon the guardianship being ended by emancipation or majority, the acquittance (*quitação*) of the

minor shall not produce effect before the accounts are approved by the judge, until which time the responsibility of the guardian remains in its entirety.

Art. 438. In cases of the death, absence, or interdiction of the guardian, the accounts shall be presented by his heirs or representatives.

Art. 439. All expenses which are justified and admittedly profitable to the minor, will be allowed to the credit of the guardian.

Art. 440. The expenses of rendering the accounts shall be paid by the ward (*tutelado*).

Art. 441. The balance due by the guardian, as well as the balance against the ward, shall draw interest from the final approval (*julgimento*) of the accounts.

Section VIII. Of the Cessation of the Guardianship.

Art. 442. The condition of ward (*pupillo*) ceases:

- I. Upon the majority or emancipation of the minor.
- II. When the minor comes under the *patrio poder* in case of legitimation, acknowledgement or adoption.

Art. 443. The functions of the guardian cease:

- I. Upon the expiration of the term for which he was obliged to serve (Art. 444).
- II. Upon the occurrence of a legitimate excuse (Arts. 414 to 416).
- III. Upon his removal (Arts. 413 and 445).

Art. 444. Guardians shall be obliged to serve for the space of two years.

Single Paragraph. They may, however, continue beyond that term in the exercise of the guardianship, if they wish

and the judge holds it to be for the benefit (*conveniente*) of the minor.

Art. 445. The guardian shall be removed (*destituido*) when he is negligent, unfaithful to his duty (*prevaricador*), or becomes subject to incapacity.

CHAPTER II.

OF CURATORSHIP (CURATELA).

Section I. General Dispositions.

Art. 446. Subject to curatorship (*curatela*), are:

I. Insane of all classes (Arts. 448, no. I, 450 and 457).

II. Deaf-mutes without education which enables them to express precisely their will (Arts. 451 and 456).

III. Spendthrifts (Arts. 459 and 461).

Art. 447. Interdiction should be demanded (*promovido*):

I. By the father, mother, or guardian.

II. By the spouse, or some near relative.

III. By the Ministerio Publico.

Art. 448. The Ministerio Publico shall only demand interdiction:

I. In case of furious insanity.

II. If none of the persons designated in the preceding Article, nos. I and II, exist or do not demand the interdiction.

III. If, although existing, they are minors or incapables.

Art. 449. In cases in which the interdiction is demanded by the Ministerio Publico, the judge will appoint a defender for the supposed incapable. In the other cases, the Ministerio Publico shall be the defender.

Art. 450. Before rendering judgment (*se pronunciar*) in regard to the interdiction, the judge shall personally examine the alleged incapable, and shall hear experts (*peritos*).

Art. 451. Upon ordering the interdiction of the deaf-mute, the judge will designate (*assignará*) the limits of the curatorship, according to the mental development of the person interdicted (*do interdicto*).

Art. 452. The sentence declaring the interdiction produces effects immediately, although subject to recourse.

Art. 453. When the interdiction is decreed, the interdict is subject to the curatorship, which is governed by the provisions of the preceding Chapter, with the restrictions of Art. 451 and the modifications of the following Articles.

Art. 454. The spouse, not judicially separated, is, of right, the curator of the other, when interdicted (Art. 455).

§ 1. In default of spouse, the legitimate curator is the father; in default of him, the mother; and in default of her, the descendant of lawful age (*maior*).

§ 2. Among the descendants, the nearer precede the more remote, and, among those of the same degree, the males precede the females.

§ 3. In default of the persons mentioned, the judge shall choose the curator.

Art. 455. When the spouse is the curator, he or she shall not be obliged to present the annual balances, nor to make an inventory, if the regimen of the marriage is that of communion, or if the property of the incapable is described in a public instrument, whatever be the regimen of the marriage.

§ 1. If the husband is the curator, the provisions of Arts. 233 to 239 will be observed.

§ 2. If the wife is the curatrix, the provisions of Art. 251, Single Paragraph, will be observed.

§ 3. If it is the father, or the mother, the provisions of Art. 435 have no application.

Art. 456. If there are means of educating the deaf-mute, the curator shall provide for his entrance into a proper establishment.

Art. 457. Insane persons shall also be placed in an adequate establishment, whenever it is inconvenient to keep them at home or their treatment requires it.

Art. 458. The authority of the curator shall extend to the person and property of the children under ward (*curatelo*), born or to be born (Art. 462, Single Paragraph).

Section II. Of Spendthrifts (Prodigos).

Art. 459. The interdiction of the spendthrift (*prodigo*) only deprives him, without a curator, from borrowing, compromising, giving acquittance, alienating, mortgaging, suing or being sued, and doing, in general, acts which are not of simple administration.

Art. 460. The spendthrift is only subject to interdiction when he has a spouse or legitimate ascendants or descendants who demand it.

Art. 461. The interdiction shall be removed, when the incapacity which occasioned it ceases, or the relatives designated in the preceding Article no longer exist.

Single Paragraph. Only the spendthrift himself and the persons designated in Art. 460, can plead (*arguir*) the nullity of the acts of the interdict during the interdiction.

Section III. Of the Curatorship of the Unborn.

Art. 462. A curator shall be given to the unborn (*nascituro*), if the father dies while the wife is pregnant and has not the *patrio poder*.

Single Paragraph. If the wife is interdicted, her curator shall be that of the unborn (Art. 458).

CHAPTER III.

OF ABSENCE.

Section I. Of the Guardianship of Absentees.

Art. 463. When a person disappears from his domicile, without notice being had of him, if he has not left a representative or procurator authorized (*a quem toque*) to administer his property, the judge, upon the request of any interested party, or of the Ministerio Publico, shall appoint a curator for him.

Art. 464. A curator will also be appointed, when the absentee (*ausente*) left a mandatory, who does not wish or cannot exercise or continue the mandate.

Art. 465. The judge who appoints the curator shall determine his powers and obligations, according to the circumstances, observing, so far as applicable, the provisions in respect to guardians and curators.

Art. 466. The spouse of the absentee, when not judicially separated, shall be his legitimate curator.

Art. 467. In default of spouse, the curatorship (*curadoria*) of the property of the absentee belongs (*incumbe*) to the father, to the mother, to the descendants, in this order, if there is no impediment which prevents them from exercising the charge.

Single Paragraph. Among the descendants, the nearest precede the more remote, and, among those of the same degree, the males are preferred to the females.

Art. 468. In cases of collection (*arrecadação*) of the inheritance or the share (*quinhão*) of absent heirs, the provisions of this Code, Arts. 1591 to 1594, in regard to the appointment of a curator, shall be observed.

Section II. Of Provisional Succession.

Art. 469. When two years have passed, without anything being known of the absentee, if he left no representative or procurator, or, after four years, if he left them, the interested parties may require that his succession be provisionally opened.

Art. 470. The following are considered, for this effect, interested parties :

- I. The spouse not judicially separated.
- II. The presumed legitimate, or the testamentary, heirs.
- III. Those having a right, subordinated to the condition of death, upon the property of the absentee.
- IV. Creditors holding obligations due and unpaid.

Art. 471. The sentence which determines the opening of the provisional succession, shall produce effect only six months after it is published in the press; but, as soon as it becomes final (*logo que passe em julgado*), the opening of the testament, if any, and the inventory and partition of the property, shall proceed, as if the absentee were deceased.

§ 1. When the period of Art. 469 is ended, and there should be absolutely no persons interested in the provi-

sional succession, it is the duty of the Ministerio Publico to demand it (*requerel-a*) of the competent judge.

§ 2. If no heir or interested party appears as soon as the sentence ordering the provisional succession to be opened becomes final (*passé em julgado*), the collection of the property of the absentee shall proceed judicially, in the form established in Arts. 1591 to 1594.

Art. 472. Before the partition the judge shall order the conversion of the movable property, subject to deterioration or loss (*extravio*), into immovables, or into titles of the public debt of the Union or of the States (Art. 477).

Art. 473. The heirs admitted (*immitidos*) into the possession of the property of the absentee shall give guaranties for the restitution of it, by means of pledges (*penhores*), or mortgages, equivalent to the respective shares (*quinhões*).

Single Paragraph. Any one having a right to the provisional possession, but who cannot furnish the guaranty required by this Article, shall be excluded, and the property which he should receive (*que lhe deviam caber*) shall be kept under the administration of the curator, or of another heir designated by the judge, who can furnish the said guaranty (Art. 478).

Art. 474. In the partition, the immovables shall be entrusted (*confiados*) in their entirety to the most proper (*mais idoneos*) of the provisional successors.

Art. 475. The immovables of the absentee can only be alienated, except by disappropriation, when the judge orders it, in order to avoid its ruin, or when it is proper to convert it into titles of the public debt.

Art. 476. The provisional successors, in possession of

the property, shall actively and passively represent the absentee; so that pending actions, and those which the absentee may in the future bring, shall run against them.

Art. 477. The descendant, ascendant, or spouse, who is provisional successor of the absentee, shall own (*fará seus*) all the fruits and income (*rendimentos*) of the property which pertain to the latter (*que a este couberem*). The other successors, however, must capitalize one-half of these fruits and income, according to the provisions of Art. 472, in accordance with the representative of the Ministerio Publico, and render annually accounts to the competent judge.

Art. 478. The heir excluded, according to Art. 473, Single Paragraph, from the provisional possession, may, upon proof that he is without means, require that one half of the income of the share which he should receive, shall be delivered to him.

Art. 479. If during the provisional possession, the exact time of the decease of the absentee be proven, the succession shall be considered opened, as of that date, in favor of the heirs who were such at that time.

Art. 480. If the absentee should appear, or his existence be proven, after the provisional possession is established, the advantages of the successors admitted to it shall at once cease, they being, however, obliged to take the necessary precautionary (*assecuratorias*) measures until the delivery of the property to its owner.

Section III. Of the Definitive Succession.

Art. 481. Thirty years after the sentence which granted the opening of the provisional succession, becomes final (*passada em julgado*), the interested parties may demand

definitive succession and the release (*levantamento*) of the bonds (*cauções*) furnished.

Art. 482. The definitive succession may also be demanded, upon proof that the absentee is eighty years of age, and that the last news of him dates back five years.

Art. 483. If the absentee returns within ten years from the opening of the definitive succession, or any of his descendants or ascendants, the former or the latter shall have only the property existing in the condition in which it is, that subrogated in its place, or the price which the heirs and other interested parties may have received for that alienated after that time.

Single Paragraph. If within the ten years of this Article, the absentee does not return, and no interested party demands the definitive succession, the full ownership of the properties collected shall pass to the State or to the Federal District, if the absentee was domiciled in either of these jurisdictions, or to the Union, if he was domiciled in territory not yet constituted into a State.

Section IV. Of the Effects of Absence With Respect to the Rights of Family.

Art. 484. If the absentee left minor children, and the other spouse has deceased, or has no right to the exercise of the *patrio poder*, these children shall be proceeded with as if they were orphans without father and mother.

BOOK II.

OF THE RIGHTS OF THINGS.

TITLE I.

Of Possession (*Posse*).

CHAPTER I.

OF POSSESSION AND ITS CLASSIFICATION.

Art. 485. Every one who has, *de facto*, the exercise, whether plenary or not, of any of the powers inherent in dominion, or ownership (*propriedade*), is considered a possessor.

Art. 486. When, by force of obligation, or of law (*direito*), in cases such as that of usufructuary, pignorative creditor, or lessee (*locatario*), direct possession is temporarily exercised, this does not annul the indirect possession of the persons from whom the direct possession is had.

Art. 487. One who, being in a relation of dependence upon another, holds (*conserva*) the possession in the name of the latter and in compliance with his orders or instructions, is not a possessor.

Art. 488. If two or more persons possess an undivided thing or are in the enjoyment of the same right, each one may exercise possessory rights over the common object, so long as they do not exclude those of the other co-possessors.

Art. 489. Possession (*posse*) is just, which is not violent, clandestine, or precarious.

Art. 490. Possession is in good faith (*de boa fé*), if the possessor is ignorant of (*ignora*) the defect (*vicio*), or the

obstacle which impedes his acquisition of the thing, or of the right possessed.

Single Paragraph. The possessor with just title has for himself the presumption of good faith, saving proof to the contrary, or when the law expressly does not admit this presumption.

Art. 491. Possession in good faith only loses this character in the case and from the moment that the circumstances create the presumption (*façam presumir*) that the possessor is not ignorant (*não ignora*) that he possesses wrongfully (*indevidamente*).

Art. 492. Saving proof to the contrary, possession is understood to retain (*manter*) the same character, with which it was acquired.

CHAPTER II.

OF THE ACQUISITION OF POSSESSION.

Art. 493. Possession is acquired:

I. By the apprehension of the thing, or by the exercise of the right.

II. By the fact of disposing (*se dispor*) of the thing, or of the right.

III. By any of the modes of acquisition in general.

Single Paragraph. The provisions of this Code, Arts. 81 to 85, are applicable to the acquisition of possession.

Art. 494. Possession may be acquired:

I. By the person himself who claims it.

II. By his representative or procurator.

III. By a third person without mandate, depending upon ratification.

IV. By "*constituto possessorio*".

Art. 495. Possession is transmitted with the same characters to the heirs and legatees of the possessor.

Art. 496. The universal successor continues by right the possession of his antecessor, for all legal effects.

Art. 497. Acts of mere permission or tolerance do not constitute (*não induzem*) possession, nor do violent or clandestine acts authorize its acquisition, except after the violence or secrecy (*clandestinidade*) has ceased.

Art. 498. The possession of an immovable raises the presumption, until proof to the contrary, of that of the movables and objects which are thereon.

CHAPTER III.

OF THE EFFECTS OF POSSESSION.

Art. 499. The possessor has the right to be maintained in possession, in case of disturbance, and restored, in case of dispossession (*esbulho*).

Art. 500. When more than one person claims to be possessor, the one who retains (*que detiver*) the thing shall be maintained provisionally in it, unless it is manifest that he obtained it from some of the others in a vicious manner.

Art. 501. The possessor, who has a just fear of being molested in his possession, may request (*impetrar*) the judge to secure him from imminent violence, under warning of penalty to whoever transgresses the order (*preceito*).

Art. 502. The possessor disturbed or dispossessed, may maintain himself or restore himself by his own force, provided that he does so at once.

Single Paragraph. The acts of defense or of retaking

(*desforço*), cannot go beyond what is indispensable for the maintenance or recovery of possession.

Art. 503. The possessor maintained in or restored to possession, has the right to indemnization of the damages (*prejuizos*) suffered, the restitution being effected at the cost of the dispossessor (*esbulhador*), in the same place of the dispossession (*esbulho*).

Art. 504. The possessor may bring the action of dispossession (*esbulho*), or for indemnization, against the third person who received the thing taken (*esbulhada*), knowing that it was so taken.

Art. 505. The plea of ownership (*domínio*), or of other right to the thing, does not prevent (*não obsta*) the maintenance or restoration of possession. In the meanwhile, the possession should not be adjudged in favor of one to whom the ownership evidently does not belong.

Art. 506. When the possessor has been dispossessed (*esbulhado*), he shall be restored to possession, as soon as he demands it, without the author of the dispossession being heard before the restitution.

Art. 507. No possessor shall be judicially maintained in or restored to a possession of less than a year and a day, except as against those who have not had a better possession.

Single Paragraph. Better possession is understood to be that which is founded upon just title; in default of title, or when the titles are equal, the older; if of the same date, the actual possession. But, if all are doubtful, the thing shall be sequestered, until it is determined to whom it belongs (*emquanto se não apurar a quem toque*).

Art. 508. If the possession was for more than a year and

a day, the possessor shall be maintained summarily, until he is defeated (*convencido*) by the ordinary means.

Art. 509. The provisions of the preceding Articles do not apply to continuous non-apparent servitudes, nor to the discontinuous, except when the respective titles derive (*proviêrem*) from the possessor of the servient estate, or from those of whom the latter holds it.

Art. 510. The possessor in good faith has the right, so long as it continues (*durar*), to the fruits received.

Art. 511. The fruits pending at the time when the good faith ceases must be restored, after deducting the expenses of their production and custody (*custeio*). The fruits gathered with anticipation must also be restored.

Art. 512. The natural and industrial fruits are considered as gathered and received as soon as they are separated. The civil fruits are considered as received day by day.

Art. 513. The possessor in bad faith (*de má fé*) responds for all the fruits gathered and received, as well as for those which, through his fault, he failed to receive (*deixou de perceber*), from the moment that he became guilty of bad faith (*em que se constituiu de má fé*); he has the right, however, to the expenses of production and custody.

Art. 514. The possessor in good faith does not respond for the loss or deterioration of the thing, for which he did not give cause.

Art. 515. The possessor in bad faith responds for the loss or deterioration of the thing, although it is accidental, unless it is proven that it would have happened in the same way if it had been in the possession of the claimant (*reivindicante*).

Art. 516. The possessor in good faith has the right to indemnization for the necessary and useful improvements, as well as the right, with respect to voluptuary improvements, if he is not paid for them, to remove them, when he can do so without detriment to the thing. For the value of necessary and useful improvements, he may exercise the right of retention.

Art. 517. The possessor in bad faith shall be reimbursed only for necessary improvements; but he has not the right of retention for the amount of them, nor that of removing the voluptuary improvements.

Art. 518. The improvements are set off against the damages (*compensam-se com os damnos*), and only obligate for reimbursement, if at the time of the eviction they yet exist.

Art. 519. The claimant (*reivindicante*) who is obliged to indemnify the improvements, has the right to choose (*optar*) between their actual value and their cost.

CHAPTER IV.

OF THE LOSS OF POSSESSION.

Art. 520. The possession of things is lost:

I. By abandonment.

II. By tradition.

III. By their loss or destruction, or by their being placed out of commerce.

IV. By the possession of another, although against the will of the possessor, if the latter is not maintained or restored within proper time (*em tempo competente*).

V. By "*constituto possessorio*".

Single Paragraph. The possession of rights is lost by it becoming impossible to exercise them, or by not exercising them for a time sufficient for them to prescribe.

Art. 521. One who has lost, or from whom has been stolen, a movable thing, or a title to bearer, may recover it from the person who detains it, saving to the latter the regressive right against the person who transferred them to him.

Single Paragraph. If the object is bought at a public auction (*leilão*), fair or market, the owner, who claims its restitution, is obliged to pay the possessor the price for which he bought it.

Art. 522. Possession is only considered lost by an absentee, when, having notice of the occupation, he refrains from retaking the thing, or, attempting to recover it, is violently repelled.

CHAPTER V.

OF POSSESSORY PROTECTION.

Art. 523. The actions for maintenance and for dispossession shall be summary, when brought within a year and a day from the disturbance or dispossession; and, passed that time, ordinary, without losing, however, their possessory character.

Single Paragraph. The period of a year and a day does not run so long as the possessor defends his possession, re-establishing the situation *de facto* anterior to the disturbance or dispossession.

TITLE II.

Of Ownership (Propriedade).

CHAPTER I.

OF OWNERSHIP IN GENERAL.

Art. 524. The law assures to the owner (*proprietario*) the right to use, enjoy and dispose of his property (*bens*),

and to recover it from the power of whoever unjustly possesses it.

Single Paragraph. Literary, scientific and artistic property (*propriedade*) shall be regulated according to the provisions of Chapter VI of this Title (Arts. 649, *et seq.*).

Art. 525. Ownership is full (*plena*), when all its elementary rights are reunited in that of the owner; limited when it has a real *onus*, or is defeasible (*resolúvel*).

Art. 526. The ownership of the soil embraces whatever is above and below it to whatever height or depth, and which is useful to its exercise; the owner cannot, however, prevent works which may be undertaken at such a height or depth that he has no interest in preventing them.

Art. 527. The ownership (*dominio*) is presumed to be exclusive and unlimited, until proof to the contrary.

Art. 528. The fruits and other products of the thing belong, even when separated, to its owner, except when, for special juridical motive, they must go to another (*houverem de caber a outrem*).

Art. 529. The owner, or the renter (*inquilino*), of the estate (*predio*), on which some one has the right to construct (*fazer*) works, may, in case of imminent damage (*damno*), require of the author of them the necessary securities against the eventual damage (*prejuizo*).

CHAPTER II.

OF THE OWNERSHIP OF IMMOVABLES.

Section I. Of the Acquisition of Immovable Ownership.

Art. 530. The ownership of immovables (*propriedade imovel*) is acquired:

I. By transcription of the title of transfer in the register of immovables.

II. By accession.

III. By usucaption.

IV. By hereditary right.

Section II. Of Acquisition By Transcription of Title.

Art. 531. Titles transferring immovable ownership by act between living persons (*acto entre vivos*), are subject to transcription in the respective register.

Art. 532. The following shall also be transcribed:

I. Judgments (*julgados*) in divisory actions, by which an end is put (*se puzer termo*) to the indivision.

II. Sentences which, in inventories and partitions, adjudicate real property in payment of the debts of the inheritance.

III. Sales at auction (*a arrematação*) and adjudications at public auction (*em hasta publica*).

Art. 533. The acts subject to transcription (Arts. 531 and 532, nos. II and III), do not transfer the ownership (*dominio*) except from the date on which they are transcribed (Arts. 856, 860, Single Paragraph).

Art. 534. The transcription shall be dated of the day on which the title is presented to the official of the register, who shall make a note of it (*o prenotar*) in the protocol.

Art. 535. If the grantor (*alienante*) should fail or become insolvent between the notation of the title and its transcription through the delay (*por atrazo*) of the official, or a doubt adjudged unfounded (*ou duvida julgada improcedente*), the required transcription shall notwithstanding be made, and in this case, it relates back (*retroage*) to the date of the annotation.

Single Paragraph. If, however, at the time of the transcription the immovable has not yet been paid for, the grantee (*adquirente*), as soon as he is notified of the failure or has knowledge of the insolvency of the grantor (*alienante*), shall deposit the price in court (*em juízo*).

Rection III. Of Acquisition by Accession (Accessão).

Art. 536. Accession may take place (*pode dar-se*):

I. By the formation of islands.

II. By alluvion (*alluvião*).

III. By avulsion (*avulsão*).

IV. By abandonment of the channel (*alveo*).

V. By the construction of works or plantations.

I. Of Islands.

Art. 537. Islands situated in non-navigable rivers belong to the adjacent riparian proprietors, the following rules being observed:

I. Those which are formed in the middle of the river, are considered accretions (*acrescimos*) to the adjacent riparian lands on both banks, in the proportion of their frontages (*testadas*), up to the line which divides the channel into two equal parts.

II. Those which are formed between this line and one of the banks are considered accretions to the adjacent riparian lands on the same side.

III. Those which are formed by the formation (*desdobramento*) of a new arm of the river continue to belong to the proprietors of the lands at the expense of which they were formed.

II. Of Alluvion.

Art. 538. The accretions formed by natural deposits and fills or bars (*aterros*), or by the turning away (*desvio*) of

the waters of the river, although the latter are navigable, belong to the owners of the marginal lands.

Art. 539. The owners of lands which border upon standing (*dormentes*) waters, such as lakes and ponds (*tanques*), do not acquire the soil uncovered by the withdrawal of the waters, nor do they lose those which they invade.

Art. 540. When the alluvial land is formed in front of estates of different owners, it shall be divided between them, in proportion to the frontage (*testada*) of each one upon the old bank; the provisions with respect to navigation being respected.

III. Of Avulsion.

Art. 541. When, by violent natural force, a portion of land is separated (*se destacar*) from one estate and is joined to another, the owner of the former may reclaim it of the latter; the latter has the option between consenting to the removal of the accreted part, or of indemnifying the claimant (Art. 178, § 6, no. XI).

Art. 542. If no one claims within a year, such portion of land shall be considered definitely incorporated into the estate where it is found, the former owner losing the right to recover it or to be indemnified (Art. 178, § 6, no. XI).

Art. 543. When the avulsion is of a thing not susceptible of natural adherence, the provisions in respect to lost things shall be applied.

IV. Of Abandoned Channel

Art. 544. The abandoned channel of a public or private river belongs to the riparian proprietors of the two margins, without the owners of the lands through which the waters opened a new course having right to any indemni-

zation. It is understood that the marginal estates extend to the middle of the channel.

V. *Of Constructions and Plantations.*

Art. 545. Every construction or plantation existing on an estate (*terreno*), is presumed made by the proprietor and at his cost, until the contrary is proven.

Art. 546. He who sows, plants, or builds on his own land, with seeds, plants or materials of another (*alheios*), acquires the ownership of them; but he is obliged to pay him their value, besides responding for losses and damages, if he acted in bad faith.

Art. 547. He who sows, plants or builds upon the land of another, loses, to the profit of the owner, the seeds, plants and constructions, but he has the right to indemnization. He shall not have it, however, if he acted in bad faith, in which event he may be constrained to replace the things in their former condition and to pay the damages (*prejuizos*).

Art. 548. If both act in bad faith, the owner will acquire the seeds, plants and constructions, with the charge, however, to reimburse the value of the improvements.

Single Paragraph. Bad faith in the owner is presumed, when the work of construction, or labor, is done in his presence and without his objection (*impugnação*).

Art. 549. The provisions of the preceding Article apply also to the case where the seeds, plants or materials do not belong to the one who in good faith employed them on the soil of another.

Single Paragraph. The owner of the seeds, plants or materials may collect the indemnization due from the owner of the soil, when he cannot have it from the planter or constructor.

Section IV. Of Usucaption.

Art. 550. He who, for thirty years, without interruption or opposition, possesses an immovable as his own, shall acquire the ownership (*dominio*) of it, independently of title and good faith, which, in such case, are presumed; and he may require the judge to so declare by sentence, which shall serve him as a title for transcription in the register of immovables.

Art. 551. He also acquires the ownership (*dominio*) of the immovable, who, for ten years as between persons present, or twenty years between absentees, possesses it as his own, continuously and without opposition (*incontestadamente*), with just title and good faith.

Single Paragraph. Those who dwell (*os moradores*) in the same district (*municipio*) are reputed as present, and as absentees those who inhabit different *municipios*.

Art. 552. The possessor, for the purpose of counting the time required by the preceding Articles, may add to his possession that of his antecessor (Art. 496), provided that both have been continuous and pacific.

Art. 553. The causes which prevent (*obstam*), suspend or interrupt prescription, also are applied to usucaption (Art. 619, Single Paragraph), and the provisions in respect to the debtor are extended to the possessor.

Section V. Of the Rights of Vicinage (Visinhança).

I. Of the Nocive Use of Property.

Art. 554. The owner or renter of an estate has the right to prevent (*impedir*) that the ill use (*máo uso*) of the neighboring property shall prejudice the safety, the quiet and the health of those who inhabit it.

Art. 555. The proprietor has the right to require of the owner of the neighboring estate its demolition, or necessary reparation, when it threatens ruin, as well as that he give bond for imminent damage.

II. Of Boundary Trees.

Art. 556. The tree whose trunk is on the dividing line, is presumed to belong in common to the owners of the adjoining (*confinantes*) estates.

Art. 557. The fruits which fall from a tree onto the neighboring land belong to the owner of the soil where they fall, if this is private property.

Art. 558. The roots and branches of trees which extend beyond the limits of the estate, can be cut, up to the vertical dividing plane, by the proprietor of the land invaded.

III. Of Forced Passage.

Art. 559. The owner of a rustic or urban estate (*predio*), which is enclaved in another, without exit (*sahida*) upon a public road, spring (*fonte*) or port, has the right to require the neighbor to give him passage, the route being judicially fixed if necessary.

Art. 560. The owners of the estates through which passage is established for the enclaved estate, have the right to full (*cabal*) indemnization.

Art. 561. The proprietor who, through his own fault, loses the right of transit through the contiguous estates, may require a new communication with the public way, upon paying double the value of the first indemnization.

Art. 562. Private passages and pathways (*atravessadoiros*), through properties also private, which do not lead

to springs, bridges, or public places, having no other means of access (*serventia*), do not constitute a servitude (*servidão*).

IV. Of Waters.

Art. 563. The owner of the lower estate (*predio inferior*), is obliged to receive the waters which run naturally from the higher (*superior*). If the owner of the latter constructs works of art, in order to facilitate the drainage (*escoamento*), he shall proceed in such way as not to make the natural and previous condition of the other worse.

Art. 564. When waters, artificially carried to the superior estate run from it to the inferior, the owner of the latter may demand that they be turned away, or that he be indemnified for the damage he may suffer.

Art. 565. The proprietor of a spring not confined (*não captada*), cannot, after the necessities of his consumption are satisfied, impede the natural course of the waters through the inferior estates.

Art. 566. Pluvial waters which run through public places, as well as the waters of public rivers, may be utilized by any proprietor of lands through which they pass, upon observing the administrative regulations.

Art. 567. It is permitted to anyone, upon previous indemnization to the proprietors prejudiced, to canalize, for agricultural or industrial uses (*proveito*), the waters to which he has a right, through the rustic estates of others, provided the same are not residence enclosures (*chacaras*), or walled places, country homes (*quintaes*), court-yards (*pateos*), truck-gardens (*hortas*), or flower-gardens (*jardins*).

Single Paragraph. The prejudiced proprietor, in such case, has the right also to indemnization for the damages

which may accrue to him in the future, through the infiltration or irruption of the waters, as well as through the deterioration of the works destined to canalize them.

Art. 568. Questions relative to the servitude of waters and to the corresponding indemnizations, shall be litigated (*pleiteadas*) in summary action.

V. *Of the Limits Between Estates.*

Art. 569. Every proprietor may oblige his adjoining owner (*o seu confinante*) to proceed with him to the demarcation between the two estates, to remark indistinct lines (*aviventar rumos apagados*), and to renew destroyed or ruined landmarks, the respective expenses being shared proportionally between the interested parties.

Art. 570. In case of confusion, the limits, in default of other means, shall be determined in conformity with the possession; and if this is not proven, the land in dispute shall be divided between the estates proportionally, or, if a convenient division is not possible, it shall be adjudicated to one of them, upon indemnization to the prejudiced proprietor.

Art. 571. The adjoining proprietors have the right to use in common the open space (*intervallo*), wall, fence, or any other dividing work between the two estates, it being presumed, until proof to the contrary, to belong to both.

VI. *Of the Right to Construct.*

Art. 572. The proprietor may erect on his land the constructions which he pleases (*que lhe aprouver*), saving the rights of the neighbors and the administrative regulations.

Art. 573. The proprietor may enjoin (*embargar*) the construction of an estate (*predio*) which invades the area

of his own, or throws gutter water (*deite gotteiras*) upon it, as well as of one in which, at less than one meter and a half from his own, a window is opened, or an open skylight (*eirado*), terrace or veranda is made.

§ 1. The provisions of this Article do not embrace skylights and air-vents (*frestas, seteiras, ou oculos para luz*), not more than ten centimeters long by ten wide.

§ 2. The vents (*vãos*), or openings for light do not prescribe against the neighbor, who, at all times, if he wishes, may build his house or abutting wall (*contramuro*), although it may shut the light out from them.

Art. 574. The provisions of the preceding Article are not applicable to estates (*predios*) separated by a highway, road, street, or any other public passage.

Art. 575. The proprietor shall build in such manner that the edge (*beiral*) of his roof shall not discharge (*dispeje*) upon the neighboring estate, leaving between it and the eaves (*beiral*), when it cannot be avoided in any other way, an interval of at least ten centimeters.

Art. 576. The owner who consents (*annuir*) to a window, bay (*sacada*), or gutter over his property, can require it to be removed (*desfaça*) only after the lapse of a year and a day from the conclusion of the work.

Art. 577. New constructions, or additions (*accrescimos*) to existing ones, cannot be made on a rustic estate without the license of the neighbor, within a meter and a half from the common limit.

Art. 578. Stables, corrals, pigstys, dungheaps, and in general, constructions which discommode or prejudice the neighborhood, shall keep the distance fixed by the municipal ordinances (*posturas*) and health regulations.

Art. 579. In cities, villages and towns the buildings of which are required to be kept in alignment, the owner of a vacant lot (*terreno vago*) may build upon it, setting his joists (*madeirando*) into the dividing wall of the contiguous estate, if it can support the new construction; but he will have to reimburse the neighbor one half the value of the wall and of the corresponding ground.

Art. 580. The adjoining owner (*confinante*) who builds first, can set the dividing wall, up to one half its thickness, on the contiguous land, without losing thereby the right to have one half its value, if the neighbor sets his joists (*a travejar*) in it (Art. 579). In this case, the former will fix the length of the foundations, as well as the depth if the land is not of rock.

Single Paragraph. If the dividing wall belongs to one of the neighbors, and is not strong enough (*não tiver capacidade*) to support the joists of the other, the latter cannot make his foundation at its base (*ao pé*), without giving bond to the former for the risk to which the insufficiency of the new work may expose the previous construction.

Art. 581. The joint-owner (*condomínio*) of the party wall (*parede meia*) may utilize it up to the middle of its thickness, not exposing to risk the safety or the separation of the two estates, and advising the other party (*consorte*) of the works which he there intends to make. He cannot, however, without the consent of the other, make closets (*armários*) or similar works in the party wall, corresponding to others of the same kind already made on the opposite side.

Art. 582. The owner of an estate, threatened by the construction of chimneys, fireplaces or furnaces on the contiguous estate, may, although the wall be common, enjoin (*embargar*) the work and require a bond against the possible damages (*prejuizos*).

Art. 583. It is not lawful to support (*encostar á*) against the party wall, or the wall of the neighbor, without his permission, furnaces, ovens or forges, hygienic apparatus, ditches, drain-pipes, deposits of salt, or of any other corrosive substances, or those susceptible of producing damaging infiltrations.

Single Paragraph. Ordinary chimneys and cooking furnaces are not included in the prohibition of this and of the preceding Article.

Art. 584. Constructions capable of polluting or rendering unfit for ordinary use the water of a well or spring of another, pre-existing them, are prohibited.

Art. 585. It is not permitted to make excavations which draw necessary water from the well or spring of another. It is, however, permitted to make them, if they scarcely (*apenas*) diminish the supply of the well or fountain of the neighbor, and are not deeper than those of the latter, in relation to the level of the sheet of water.

Art. 586. Everyone who violates the provisions of Arts. 580 and following Articles, is obliged to demolish the constructions made, responding for losses and damages.

Art. 587. Every proprietor is obliged to consent that his neighbor, upon previous notice, may enter upon his estate and temporarily use it, when it is indispensable to the reparation or cleaning, construction or reconstruction of his house. But, if any damage arises from it, he shall have the right to be indemnified.

Single Paragraph. The same provisions apply to the cases of cleaning or repairing of drains, gutters and hygienic apparatus, as well as of wells and springs already existing.

VII. *Of the Right of Enclosure (Tapagem).*

Art. 588. The proprietor has the right to fence, wall, ditch or enclose (*tapar*) in any way his estate, urban or rural, upon conforming with the following dispositions:

§ 1. The divisory enclosures (*tapumes*) between properties are presumed common, the proprietors of the adjoining immovables being obliged to share in equal parts the expenses of their construction and preservation.

§ 2. By "enclosures" (*tapumes*) are understood living hedges (*sebes*), fences of wire or wood, ditches or embankments (*banquetas*), or any other means of separation of the lands, observing the dimensions established in municipal ordinances, in accordance with the customs of each locality, provided that they prevent (*impeçam*) the passage of large animals, such as cows, horses and mules.

§ 3. The obligation to fence properties in order to keep within their limits domestic birds and animals, such as goats, hogs and sheep, which require special enclosures, shall rest exclusively upon (*cabe a*) the respective owners or keepers (*detentores*).

§ 4. When it is necessary to trim (*decotar*) the live hedge or to repair the dividing wall, the proprietor shall have the right to enter upon the land of the neighbor, after notice to him. This right, however, does not exclude the obligation to indemnify the neighbor for all damage which the work may occasion him.

§ 5. The marginal fences of public ways shall be made and preserved by the administration having charge of them (*a quem incumbirem*), or by the persons, or companies (*empresas*) who make use (*exploram*) of them.

Section VI. Of the Loss of Immovable Ownership (Propriedade).

Art. 589. Besides the causes of extinction considered in this Code, immovable ownership (*propriedade*) is also lost:

- I. By alienation.
- II. By renouncement (*renuncia*).
- II. By abandonment.
- IV. By the perishing of the immovable.

§ 1. In the first two cases of this Article, the effects of the loss of ownership (*dominio*) shall be subordinated to the transcription of the transmissive title, or of the renunciative act, in the register of the place of the immovable.

§ 2. The immovable abandoned shall be held (*arrecadar-se-á*) as vacant property (*bem vago*), and shall pass, after ten years, to the dominion of the State, or of the Federal District, if it is within their respective jurisdiction, or of the Union, if it is in territory not yet constituted into a State.

Art. 590. Immovable ownership is also lost by disappropriation for public necessity or utility.

§ 1. Cases of public necessity are considered to be:

- I. The defense of the national territory.
- II. The public safety.
- III. Public succor, in cases of calamity.
- IV. The public health.

§ 2. Cases of public utility are considered to be:

I. The foundation of towns and of establishments of public assistance, education or instruction.

II. The opening, enlargement or prolongation of streets, plazas, canals, railroads, and, in general, of any public ways (*vias*).

III. The construction of works, or establishments, de-

stined to the general good of a locality, its adornment (*decoração*) and hygiene.

IV. The exploration of mines.

Art. 591. In case of imminent danger, as war, or intestine commotion (Federal Constitution, Art. 80), the competent authorities may use private property as far as the public good may require, the proprietor being guaranteed the right of subsequent indemnization.

Single Paragraph. In the other cases the proprietor shall be previously indemnified, and, if he refuses indemnization, the value shall be judicially consigned to him.

CHAPTER III.

OF THE ACQUISITION AND LOSS OF MOVABLE OWNERSHIP.

Section I. Of Occupation.

Art. 592. Whoever takes possession (*se assenhorear*) of a thing abandoned, or not yet appropriated, at once acquires the ownership (*propriedade*) of it when such occupation is not forbidden by law.

Single Paragraph. Movable things again become without an owner, when their owner abandons them, with intention of renouncing them.

Art. 593. Things without owner and subject to appropriation, are:

I. Wild (*bravios*) animals, while they are possessed of (*entregues á*) their natural liberty.

II. Tame and domesticated animals which are not branded (*assignalados*), if they have lost the habit of returning to the place where they accustomed to gather, except in the case of Art. 596.

III. Swarms of bees, previously appropriated, if the

owner of the hive to which they belonged, does not reclaim them immediately.

IV. Stones, shells and other mineral vegetables or animal substances cast up by the sea on the shores, if they do not present a sign of previous ownership (*dominio*).

Of Hunting (Caça).

Art. 594. The administrative regulations in regard to hunting (*caça*) being observed, it can be exercised on public lands, or on private lands with the license of the owner.

Art. 595. The animal caught by the hunter belongs to him. If the hunter is in pursuit (*no encalço*) of an animal and has wounded it, it shall belong to him, although another catches it.

Art. 596. Domesticated animals which flee from their owners are not reputed animals of the chase, while the owners are in pursuit of them.

Art. 597. If the wounded quarry takes refuge in fenced, walled, hedged or cultivated land, the owner of it, if he does not wish to permit the entrance of the hunter, must deliver it to him or expel it.

Art. 598. Whoever enters upon the land of another to hunt, without the license of the owner, loses the game to the latter, and shall respond to him for the damage which he may cause.

Of Fishing.

Art. 599. The administrative regulations being observed, it is lawful to fish in public waters, or in private waters with the consent of the owner.

Art. 600. The fish which he catches belongs to the fisher-

man, also fish which, having harpooned or speared, he pursues, although another catches it.

Art. 601. Whoever, without permission of the proprietor, fishes in waters of another, shall lose to him the fish which he catches, and shall respond to him for the damage which he may cause him.

Art. 602. In private waters, which pass through the lands of many owners, each of the riparian owners has the right to fish from his side to the middle thereof.

Of Finds (Invenção).

Art. 603. Whoever finds the lost thing of another, must restore it to the owner or legitimate possessor.

Single Paragraph. Not knowing him, the finder (*inventor*) shall try to discover him, and if he does not appear, shall deliver the object found to the competent authority of the place.

Art. 604. He who restores the things found, in the terms of the preceding Article, shall have the right to a reward (*recompensa*) and to indemnization for the expenses which he has made for the preservation and transportation of the thing, if the owner does not prefer to abandon it.

Art. 605. The finder responds for the damages caused to the proprietor or legitimate possessor, when he has acted with deceit (*dolo*).

Art. 606. If, after six months from the notice (*aviso*) to the authority, no one presents himself who shows ownership (*dominio*) of the thing, it shall be sold at public auction, and after deducting the expenses and the reward of the finder (Art. 604), the remainder shall belong to the State or to the Federal District, if the lost object was found (*se deparou*) within their respective jurisdiction, or

to the Union, if it were in territory not yet constituted into a State.

Of Treasure.

Art. 607. If any one should casually find on the land of another, an ancient deposit of money or precious things, buried or hidden, of the owner of which there is no memory, it shall be divided equally between the owner of the land and the finder (*inventor*).

Art. 608. If the person who found it is the owner of the land, any employee of his sent to make the search, or a third person not authorized by the owner of the estate, the treasure shall belong entirely to the latter.

Art. 609. If it is found on foral land (*terreno aforado*), it shall be divided equally between the finder and the emphyteuta, or shall belong to him entirely if he is the finder.

Art. 610. If anyone shows that the deposit found belongs to him, it shall cease to be considered as treasure.

Section II. Of Specification (Especificação).

Art. 611. Whoever, working on prime material, obtains a new species (*especie*), shall be the owner of it if the material was his, although only in part, and if it cannot be restored to its previous form.

Art. 612. If all the material belongs to another, and it cannot be reduced to the preceding form, the new species shall belong to the maker (*especificador*) in good faith.

§ 1. But, when the reduction is practicable, or when impracticable, if the new species was obtained in bad faith, it shall belong to the owner of the prime material.

§ 2. In any case, however, if the price of the handiwork (*mão de obra*) exceeds considerably the value of the prime material, the new species shall belong to the maker.

Art. 613. The damages which they may suffer shall be reimbursed to those prejudiced in the cases (*hypotheses*) of the two preceding Articles, except the last of Art. 612, § 1, concerning the irreducible specification obtained in bad faith.

Art. 614. The specification obtained in any of the manners of Art. 62 confers (*attribute*) the ownership upon the maker (*especificador*), but does not relieve him from indemnization.

Section III. Of Confusion, Commixture, and Adjunction.

Art. 615. Things belonging to different owners, confused, commingled, or conjoined, without their consent, continue to belong to them, if it is possible to separate them without deterioration.

§1. If it is not possible, or the separation requires excessive expense, the whole subsists undivided, each of the owners being entitled to a share proportional to the value of the thing which he contributed (*com que entrou*) to the mixture or aggregate.

§ 2. If, however, one of the things can be considered as principal, the owner of it shall own the whole (*sel-o-á do todo*), indemnifying the others.

Art. 616. If the confusion, adjunction or mingling was practiced in bad faith, the other party may choose between keeping the whole, upon paying for the portion which is not his, or renouncing the part that belonged to him, upon full indemnization.

Art. 617. If a new species is formed by the commingling of materials of different nature, the confusion shall have the nature of specification for the effect of attributing the ownership (*dominio*) to the respective author.

Section IV. Of Usucaption (Usucapião).

Art. 618. He who possesses a movable thing as his own, without interruption or opposition during three years, shall acquire the ownership (*dominio*) of it.

Single Paragraph. The possession which is not based upon a just title, as well as that which is tainted, originally or subsequently, by bad faith, does not produce usucaption.

Art. 619. If the possession of the thing is prolonged for ten years, it shall produce usucaption independently of title or good faith.

Single Paragraph. The provisions of Arts. 552 and 553 are applicable to the usucaption of movable things.

Section V. Of Tradition (Tradição).

Art. 620. The ownership (*dominio*) of things is not transferred by contracts before tradition. But this is understood, when the grantor (*transmittente*) continues to possess by "*constituto possessorio*" (Art. 675).

Art. 621. If the thing alienated is in the possession of a third person, the acquirer (*adquirente*) shall obtain the indirect possession by the cession which the grantor (*alienante*) makes to him of his right to the restitution of the thing.

Single Paragraph. In the cases of this and the preceding Article, final part, the acquisition of the indirect possession is equivalent to tradition.

Art. 622. Tradition made by one who is not the proprietor, does not alienate the property. But, if the acquirer acts in good faith, and the grantor afterwards acquires the ownership (*dominio*), the transfer is considered revalidated and the effect of the tradition operative, from the moment of his act.

Single Paragraph. But tradition does not transfer the ownership (*dominio*) when it is based upon (*tiver por titulo*) a void act.

CHAPTER IV.

OF JOINT OWNERSHIP (CONDOMINIO).

Section I. Of the Rights and Duties of Co-Owners.

Art. 623. In ownership in common, co-ownership, or joint-ownership, each co-owner (*condomino*) or party (*consorte*) may:

I. Freely use the thing according to its purpose (*destino*), and exercise all rights over it compatible with indivision.

II. Recover it from a third person.

III. Alienate or encumber his respective undivided part (Art. 1139).

Art. 624. The co-owner is obliged to contribute in proportion of his part, to the expenses of the preservation or division of the thing, and to bear in the same proportion the charge (*onus*) to which it is subject.

Single Paragraph. If any of the co-owners do not agree to this, the thing shall be divided, the share of each one responding for its part of the expenses of the division.

Art. 625. The debts contracted by one of the co-owners for the benefit of the joint interest (*communhão*), and during it, obligate the contracting party (*contrahente*); but give him a regressive action against the others.

Single Paragraph. If any of them do not consent (*an-nuir*), the provisions of the Single Paragraph of the preceding Article shall be observed.

Art. 626. When the debt has been contracted by all the co-owners, without indication of the part of each one in the collective obligation, and without stipulation of solidarity, it is understood that each one is obligated proportionally to his share, or lot, in the common thing.

Art. 627. Each party (*consorte*) responds to the others for the fruits which he received from the common thing, and for the damage which he caused to it.

Art. 628. Neither one of the co-proprietors can alter the common thing without the consent of the others.

Art. 629. It is lawful at all times for the co-owner to demand the division of the common thing.

Single Paragraph. The parties may, however, agree that the thing may remain undivided, for a term not greater than five years, susceptible of subsequent extension.

Art. 630. If the indivision is a condition established by the giver, or testator, it is understood that it was only for five years.

Art. 631. Division between co-owners is simply declaratory and not attributive of ownership (*propriedade*). It may, therefore, be decreed preliminarily in the same action.

Art. 632. When the thing is indivisible, or becomes by division, inappropriate for its purpose (*destino*), and the parties do not wish to adjudicate it to one only, indemnifying the others, it shall be sold and the price distributed; in the sale, on equal conditions of offer, the co-owner being preferred to the stranger; between co-owners, he who has more valuable improvements (*bemfeitories*) in the thing,

and if there are none such, the one who has the greater share.

Art. 633. No co-owner can, without the previous consent of the others, give possession, use or enjoyment of the property to strangers.

Art. 634. The co-owner, as any other possessor, may defend his possession against another.

Section II. Of the Administration of the Co-Ownership.

Art. 635. When by reason of circumstances of fact or by reason of disaccord, the use and enjoyment in common is not possible, the co-owners shall determine whether the thing shall be administered, sold or hired.

§ 1. If all agree that it be not sold, the majority (Art. 637) has the right to determine upon the administration or renting (*locação*) of the common thing.

§ 2. If the majority decides for administration, it will also choose the administrator.

Art. 636. It being resolved to hire the common thing (Art. 637), the co-owner shall be preferred, on equal conditions, to the stranger.

Art. 637. The majority shall be calculated not by number, but by the value of the shares.

§ 1. The deliberations do not obligate if not taken by an absolute majority, that is, by votes which represent more than half of the total value.

§ 2. In case of a tie, the judge shall decide, at the instance of any co-owner, the others being heard.

Art. 638. The fruits of the common thing, there being

no stipulation or disposition of last will to the contrary, shall be divided in proportion to the shares.

Art. 639. In cases of doubt, the shares are presumed to be equal.

Art. 640. The co-owner who administers without opposition of the others, is presumed to be the common mandatarary.

Art. 641. In omitted cases, the rules of partition of inheritances (Arts. 1772, *et seq.*), are applied to the division of co-ownership (*comdominio*).

Section III. Of Co-Ownership of Walls, Fences, Etc.

Art. 642. Co-ownership by halves (*por meação*) of walls (*paredes* and *muros*), fences and embankments (*vallas*) is regulated by the provisions of this Code, Arts. 569 to 589, and 623 to 634.

Art. 643. The proprietor who has the right to separate (*extremar*) an immovable with walls (*paredes*), fences, walls (*muros*), embankments (*vallas* or *vallados*), has also the right to acquire party-interest (*meação*) in the walls, embankments or fences of the neighbor, reimbursing him for one-half of the actual value of the work and the land occupied by it (Art. 727).

Art. 644. If the two do not agree upon the price of the work, it shall be arbitrated by experts at the expense of both the adjoining owners (*confinantes*).

Art. 645. Whatever be the price of the party interest (*meação*), so long as the party claiming the division does not pay or deposit it, he can make no use of the wall (*paredo* and *muro*), embankment, fence, or any other divisory work.

Section IV. Of Joint Pasturage (Compascuo).

Art. 646. If the joint pasturage (*compascuo*) on private estates is established by servitude, it shall be governed by the rules (*normas*) governing it. If not, the provisions of this Chapter shall be observed so far as applicable, if the title from which the communion of pasturage arises does not otherwise stipulate.

Single Paragraph. Joint pasturage in vacant (*baldios*) and public lands shall be regulated by the municipal legislation.

CHAPTER V.

OF DEFEASIBLE OWNERSHIP (PROPRIEDADE RESOLUVEL).

Art. 647. When the ownership (*dominio*) is terminated (*resolvido*) by the fulfillment of the condition or by the expiration of the term (*advento do termo*), the real rights granted during its continuance (*pendencia*) are understood as also resolved, and the proprietor in whose favor the resolution operates may recover the thing from the power of whoever detains it.

Art. 648. If, however, the ownership (*dominio*) is resolved by another intervening (*superveniente*) cause, the possessor, who has acquired it by a title anterior to the resolution, shall be considered as perfect proprietor, and the person in whose benefit the resolution took place (*hou-ver*) has an action against the person whose ownership (*dominio*) was resolved, to recover the thing itself or its value.

CHAPTER VI.

OF LITERARY, SCIENTIFIC, AND ARTISTIC PROPERTY.

Art. 649. To the author of a literary, scientific or artistic work belongs the exclusive right to reproduce it.

§ 1. The heirs and successors of the author shall enjoy this right for the time of sixty years, counted from the day of his decease.

§ 2. If the author dies without heirs or successors, the work becomes public property (*cae no dominio publico*).

Art. 650. The editor of a publication composed of articles or passages (*trechos*) from different authors, gathered into a whole or distributed into a series, such as journals, reviews, dictionaries, encyclopedias, and selections (*selectas*), enjoys the rights of author for the economic effects secured by this Code.

Single Paragraph. Every author preserves, in this case, his rights to his production, and may reproduce it separately (*em separado*).

Art. 651. The editor also exercises the rights to which the preceding Article refers, when the work is anonymous or pseudonymous.

Single Paragraph. But, in this case, when the author makes himself known, he shall assume the exercise of his rights, without prejudice to those acquired by the editor.

Art. 652. The translator of a work already become public property and the writer of versions permitted by the author of the original work, or in his default by his heirs or successors, have also the same rights as an author. But the translator cannot object (*se oppor*) to a new translation, unless it is a simple reproduction of his own, or unless the author gave him such right.

Art. 653. When a work, made in collaboration, is not divisible, and does not come within the provisions of Art. 651, the collaborators, there being no agreement to the contrary, shall have equal rights between themselves, and neither of them can, without the consent of the other and

under penalty of responding for losses and damages, reproduce it or authorize its reproduction, except when done in the collection of his complete works.

Single Paragraph. Upon the decease of one of the collaborators without heirs or successors, his right accretes to the survivors.

Art. 654. In the case of the preceding Article, if the collaborators disagree, the numerical majority shall decide, and in default of this, the judge, at the instance of any of them.

§ 1. The dissenting collaborator, however, has the right to not contribute to the expenses of reproduction, upon renouncing his part in the profits, as well as the right to forbid that his name be inscribed in the book.

§ 2. Each collaborator may, however, individually, without the consent of the others, defend his own rights against third persons, who are not legitimate representatives of the former.

Art. 655. The author of a musical composition, based upon a poetical text, may execute it, publish it or transmit his rights, independent of the authorization of the writer, but indemnifying the latter, who shall preserve the right to the reproduction of the text without the music.

Art. 656. He who, being legally authorized, reproduces a work of art by a different artistic process, or by the same process with a novelty in the composition, shall be, with respect to the copy, considered an author.

Single Paragraph. He who thus reproduces works already become public property, enjoys equally the rights of author, without dependence upon authorization.

Art. 657. A theatrical or musical work being published and exposed for sale, the author is understood to consent

that it may be represented or executed, wherever its rendition (*audição*) is not paid for (*retribuida*).

Art. 658. He who, with the authorization of the composer of a musical work, writes combinations or variations upon the original motifs (*sobre os seus motivos*), has, with respect thereto, the same rights, and with the same guaranties, as their author has with respect to the former.

Art. 659. The cession, or the inheritance, of either the rights of an author or of a work of art, literature or science, does not transmit the right to modify it. But this may be exercised by the author, in each successive edition, the rights of the editor being respected.

Single Paragraph. The cession of journalistic articles does not produce effect, saving agreement to the contrary, beyond the term of twenty days counted from their publication. At its expiration, the author recovers his right in all its plenitude.

Art. 660. The Union or the States may disappropriate for public utility, upon previous indemnization, any work published, the owner of which does not wish to re-edit it.

Art. 661. To the Union, to the States, or to the Municipios belong:

I. The manuscripts of their archives, libraries and departmental offices (*repartições*).

II. Works prepared at the direction of (*encomendados*) the respective governments and published at public expense.

Single Paragraph. Works simply subsidized by them do not, however, become the property of the Union, of the State, or of the Municipio.

Art. 662. Works published by the Federal, State or Municipal Government, other than public acts and official

documents, become public property fifteen years after their publication.

Art. 663. No one can reproduce a work, not yet become public property, on the pretext of annotating it, commenting upon it or improving it, without permission of the author or his representative.

§ 1. The commentaries or annotations may, however, be published separately, forming a work by itself.

§ 2. Permission confers upon the reproducer the rights of the author of the original work.

Art. 664. The permission of the author, which is also necessary in order to reduce the work to a compendium or résumé, confers upon the maker of the résumé or compendium the same rights of the former to the original work.

Art. 665. The permission (*licença*) of the author of the original work to another, to produce a theatrical piece from a romance, to render a prose work into verse, or *vice-versa*, or to develop the episodes, the subject and the general plan of it, is equally necessary, and produces the same effects as the permission treated of in the preceding Article.

Single Paragraph. Paraphrases which are not a true reproduction of the original work, are free.

Art. 666. The following are not considered violations (*offensa*) of the rights of an author :

I. The reproduction of passages or short portions (*trechos*) of works already published, and the insertion, although integral, of small compositions of another, in the body of a larger work, provided the latter is of (*apresente*) a scientific character, or is a compilation intended for a literary, didactic or religious purpose; the source from which the excerpts are taken, and the names of the authors, must, however, be indicated.

II. The reproduction in newspapers or periodicals, of notices and articles without literary or scientific character, published in other newspapers or periodicals, the names of the authors and of the periodicals or dailies from which they are copied being mentioned.

III. The reproduction, in newspapers and periodicals, of speeches delivered in public meetings, of whatever nature.

IV. The reproduction of the public acts and official documents of the Union, of the States, of the Municipios, and of the Federal District.

V. The quotation in books, journals or reviews, of passages from any work for the purpose of criticism or polemics.

VI. The copy, made by hand, of any work, provided that it is not intended for sale.

VII. The reproduction, in the body of any writing, of works of figurative arts, provided that the writing is the principal feature, and the figures serve only to explain the text; the names of the authors or the sources utilized, must, however, be indicated.

VIII. The utilization of a work of figurative art, in order to make (*para se obter*) a new work.

IX. The reproduction of a work of art existing in the streets and plazas.

X. The reproduction of pictures or busts ordered by private persons (*de encomenda particular*), when made by the owner of the objects ordered (*encomendados*). The person represented and his immediate successors may object (*oppor-se*) to the reproduction or public exhibition of the picture or bust.

Art. 667. The right, which belongs to the author, of attaching (*ligar*) his name to all his intellectual productions, is susceptible of cession.

§ 1. The wrongful use (*usurpação*) of the name of the

author or its substitution by another, without agreement to justify it, gives the right to indemnization for losses and damages.

§ 2. The person guilty (*o autor*) of the usurpation or substitution, shall moreover be obliged to insert in the work the name of the true author.

Art. 668. The author has no right to enjoy the guaranty of the law, in respect to writings forbidden by law, which, by sentence, are ordered to be withdrawn from circulation.

Art. 669. Whoever publishes an unedited work, or reproduces a work about to be published (*em via de publicação*) or already published, belonging to another, without the permit or consent (*outorga ou acquiescencia*) of the latter, besides losing, in favor of the author or owner, the copies fraudulently reproduced which may be found, shall pay him the value of the whole edition, minus such copies, at the price for which genuine copies are for sale, or at which they are valued (*avaliados*).

Single Paragraph. If the number of copies fraudulently printed and distributed is unknown, the transgressor shall pay the value of one thousand copies besides those which are found.

Art. 670. Whoever exposes for sale, or for public reading for remuneration, a work fraudulently printed, shall be jointly (*solidariamente*) responsible, with the editor, in the terms of the preceding Article; and, if the work was printed (*estampada*) in a foreign country, the seller, or the person who exhibits it (*o expositor*), shall respond as editor.

Art. 671. Whoever publishes any manuscript, without permission of the author or of his heirs or representatives, shall be responsible for the losses and damages.

Single Paragraph. Private letters (*cartas-missivas*) cannot be published without the consent of their authors or their representatives, but they may be filed (*juntas*) as documents in judicial proceedings (*autos*).

Art. 672. The author, or proprietor, whose work is fraudulently reproduced, may, as soon as he knows of it, demand the seizure of the copies reproduced, retaining his right to indemnization for losses and damages, although no copy is found.

Art. 673. For security of his right, the proprietor of the work published (*divulgada*) by typography, lithography, engraving, casting (*moldagem*), or any other system of reproduction, shall deposit, for the purpose of registry (*com destino ao registro*), two copies in the National Library, in the National Institute of Music or in the National School of Fine Arts of the Federal District, according to the nature of the production.

The certificates of registry attest (*induzem*) the ownership of the work, saving proof to the contrary.

TITLE III.

Of Real Rights Upon Things of Another.

CHAPTER I.

GENERAL DISPOSITIONS.

Art. 674. Real rights, other than ownership, are:

I. Emphyteusis.

II. Servitudes.

III. Usufruct.

IV. Use.

V. Habitation.

VI. Incomes (*rendas*) expressly constituted upon immovables.

VII. Pledge (*penhor*).

VIII. Antichresis.

IX. Mortgage (*hypotheca*).

Art. 675. Real rights upon movable things, when constituted or transmitted by acts between living persons, are only acquired by tradition (Art. 620).

Art. 676. Real rights upon immovables, constituted or transmitted by acts between living persons are only acquired after the transcription, or inscription, in the register of immovables, of the said titles (Arts. 530, no. I, and 856), excepting the cases expressed in this Code.

Art. 677. Real rights pass with the immovable to the ownership (*para o dominio*) of the person who acquires the same (*adquirente*).

Single Paragraph. The burden (*onus*) of taxes (*impostos*) imposed upon estates (*predios*) is transmitted to those who acquire them (*aos adquirentes*), except when there appear in the deed (*escriptura*) the certificates of receipt by the tax-office (*pelo fisco*) of the taxes due, and, in case of public sale (*em praça*), upon the equivalent of the price bid at the auction sale (*até o preço da arrematação*).

CHAPTER II.

OF EMPHYTEUSIS.

Art. 678. Emphyteusis (*aforamento*, or *emprazamento*), occurs (*dá-se*), when by act between living persons or by last will, the owner confers upon (*attribue a*) another the beneficial ownership (*dominio util*) of the immovable, the person who acquires it, and who thus is constituted the emphyteuta, paying to the direct landlord (*senhorio directo*) a pension or rental (*fôro*), which is annual, certain and invariable.

Art. 679. The contract of emphyteusis is perpetual. An emphyteusis for a limited time is considered a lease (*arrendamento*), and is governed by the rules applicable to leases (*como tal se rege*).

Art. 680. Only uncultivated lands or lands intended for building can be the object of emphyteusis.

Art. 681. Emphyteutic lands are transmitted by inheritance in the same order as is established with respect to allodial lands in this Code (Arts. 1603 to 1619); but, they cannot be divided into tracts (*glebas*) without the consent of the landlord (*senhorio*).

Art. 682. The emphyteuta is obliged to satisfy the taxes and the real burdens (*onus reaes*) which are imposed upon the immovable.

Art. 683. The emphyteuta, or tenant (*foreiro*), cannot sell or give in payment the beneficial ownership, without previous notice to the direct landlord, so that the latter may exercise the right of option; and the direct landlord has thirty days in which to declare, in writing, dated and signed, whether he wishes (*que quer*) the preference in the alienation, for the same price and on the same conditions.

If within the term indicated, he does not respond or does not offer the price of the alienation, the tenant (*foreiro*) may effect it to any one else (*com quem entender*).

Art. 684. The tenant has, likewise, the right of preference, in the event that the landlord wishes to sell the direct ownership (*dominio directo*) or to give it in payment. For this purpose (*efeito*), the landlord is subject to the same obligation imposed, in similar circumstances, upon the tenant (Art. 683).

Art. 685. If the emphyteuta does not comply with the provisions of Art. 683, the landlord may, notwithstanding,

use his right of preference, and take (*havendo*) the land from the person acquiring it, for the price of acquisition.

Art. 686. Whenever the transfer of the beneficial ownership (*dominio util*) is effected, by sale or giving in payment, the direct landlord, who does not exercise his option, shall have the right to receive from the alienor the duty (*laudêmio*) of two and one-half per cent upon the price of the alienation, if no other has been fixed in the instrument of lease (*título de aforamento*).

Art. 687. The tenant has no right to the remission of the rental (*fôro*), on account of the sterility or partial destruction of the emphyteutic estate, nor of the total loss of the fruits; in such cases he may, however, abandon it to the direct landlord, and, independently of his consent, cause the act of renouncement to be inscribed (Art. 691).

Art. 688. It is lawful for the emphyteuta to donate, give in dowry, or exchange the leased estate for a non-fungible thing, notifying the landlord, within sixty days counted from the act of transfer, under penalty of continuing responsible for the payment of the rental (*fôro*).

Art. 689. In case of levy (*fazendo-se penhora*) upon the entailed estate (*predio emprazado*), for debts of the emphyteuta, the direct landlord shall be cited to attend at the public sale (*praça*), and he shall have the preference, either, in case of auction-sale, over the other bidders, on like conditions, or, in default of them, in case of adjudication.

Art. 690. When the entailed estate comes to belong to several persons, they shall, within six months, choose a chief tenant (*cabecel*), under penalty of the right of choice devolving upon the landlord.

§ 1. After the choice is made, all the actions of the land-

lord shall be brought against the chief-tenant, saving to the latter his regressive right against the others for their respective quotas.

§ 2. If, however, the landlord agrees upon the division of the estate (*prazo*), each of the tracts (*glebas*) into which it is divided shall constitute a distinct estate (*prazo*).

Art. 691. If the emphyteuta attempts (*pretende*) to abandon the entailed estate gratuitously to the landlord, the creditors prejudiced by the abandonment may object (*oppor-se*), giving bond for the future pensions, until their debts are paid.

Art. 692. The emphyteusis is extinguished :

I. By the natural deterioration of the entailed estate, when it ceases to be worth the capital corresponding to the rental (*fôro*) plus one-fifth of the latter.

II. By forfeiture (*commisso*), through the tenant's failure to pay the pensions due, for three consecutive years, in which event the landlord shall indemnify him for the necessary improvements.

III. Upon the decease of the emphyteuta, without heirs, saving the rights of his creditors.

Art. 693. All emphyteuses (*aforamentos*), saving agreement between the parties, are redeemable thirty years after they are constituted, through the payment of twenty annual pensions by the tenant, who cannot in his contract renounce the right of redemption, nor contravene (*contrariar*) the imperative provisions of this Chapter.

Art. 694. The sub-emphyteusis is subject to the same provisions as the emphyteusis. That of sea-lands (*terrenos de marinha*) and accretions (*acrescidos*) shall be regulated by a special law.

CHAPTER III.

OF PREDIAL SERVITUDES (SERVIDÃO PREDIAL).

Section I. Of the Constitution of Servitudes.

Art. 695. The predial servitude (*servidão predial*) is imposed upon one estate (*predio*) in favor of another, belonging to a different owner. By it the owner of the servient estate (*predio serviente*) loses some of his rights of ownership (*direitos dominicaes*), or is obliged to tolerate the use of it, for a certain purpose, by the owner of the dominant estate (*predio dominante*).

Art. 696. Servitude is not presumed.

Art. 697. Unapparent servitudes (*servidões não apparentes*) can only be established by means of transcription in the register of immovables.

Art. 698. The uncontested and continuous possession of a servitude for ten or twenty years, in the terms of Art. 551, authorizes the possessor to transcribe it in his name in the register of immovables, the sentence which adjudges the consummated usucaption serving him as a title.

Single Paragraph. If the possessor has no title, the period (*prazo*) for usucaption shall be thirty years.

Art. 699. The owner of a servitude has the right to make all the works necessary for its preservation and use. If the servitude pertains to more than one estate, the expenses shall be prorated among the respective owners.

Art. 700. The works to which the preceding Article refers must be made by the owner of the dominant estate, if the title does not expressly provide the contrary.

Art. 701. When the obligation rests (*incumbir*) upon

the owner of the servient estate, he may exonerate himself by abandoning the property (*propriedade*) to the owner of the dominant estate.

Art. 702. The owner of the servient estate cannot embarrass in any way the legitimate use of the servitude.

Art. 703. The owner of the servient estate may remove the servitude from one place (*local*) to another, provided that he does so at his own cost and does not in any way diminish the advantages of the dominant estate.

Art. 704. The use of the servitude shall be restricted to the necessities of the dominant estate, avoiding, as far as possible, aggravating the charge upon the servient estate.

Single Paragraph. If the servitude was constituted for a certain purpose, it cannot be amplified into another, except as provided in the following Article.

Art. 705. In servitudes of transit, that of greater includes that of lesser *onus*, and the lesser excludes the more onerous.

Art. 706. If the necessities of the cultivation of the dominant estate should require (*impuzerem*) a greater extension (*largueza*) of the servitude, the owner of the servient estate is obliged to suffer it; but he has the right to be indemnified for the excess.

Single Paragraph. If, however, this increase of burden is due to a change in the manner of exercising the servitude, as in the case of claiming to build on land until then destined to cultivation, the owner of the servient estate may prevent it (*impedil-o*).

Art. 707. Predial servitudes are indivisible. They subsist, in case of partition, in benefit of each of the shares of the dominant estate, and continue to burden each of those

of the servient estate, unless, by its nature or purpose, it only applies to a certain part of the one or the other.

Section II. Of the Extinction of Servitudes.

Art. 708. Servitudes, when once transcribed, are only extinguished, with respect to third persons, when they are cancelled, except in cases of expropriation.

Art. 709. The owner of the servient estate has the right, by judicial means, to the cancellation of the transcription, although the owner of the dominant estate should oppose it (*lh'o impugne*):

I. When the party entitled (*o titular*) has renounced his servitude.

II. When the servitude is for passage, which has ceased through the opening of a public road, accessible to the dominant estate.

III. When the owner of the servient estate redeems the servitude.

Art. 710. Predial servitudes are extinguished:

I. By the uniting of the two estates under the ownership of the same person.

II. By the suppression of the respective works by effect of contract, or of other express title.

III. By non-user, during ten continuous years.

Art. 711. Upon the extinction of the predial servitude transcribed, for any of the causes of the preceding Article, the owner of the servient estate has the right to cancel it, upon proof of its extinction.

Art. 712. If the dominant estate is mortgaged, and the servitude is mentioned in the mortgage title, the consent of the creditor shall also be necessary to cancel the mortgage.

CHAPTER IV.

OF USUFRUCT.

Section I. General Dispositions.

Art. 713. The real right to enjoy (*fruir*) the profits (*utilidades*) and fruits of a thing, while temporarily separated (*destacado*) from the ownership, constitutes usufruct.

Art. 714. Usufruct may be imposed (*recair*) upon one or more properties (*bens*), movable or immovable, upon an entire patrimony, or part of it, and embrace the fruits and profits of it, in whole or in part.

Art. 715. The usufruct of immovables, when it does not depend upon a right of family, shall depend upon transcription in the respective register.

Art. 716. Unless otherwise provided, the usufruct extends to the accessories of the thing and to its increases (*acrescidos*).

Art. 717. The usufruct can only be transferred, by alienation, to the proprietor of the thing; but its exercise may be assigned by gratuitous or onerous title.

Section II. Of the Rights of the Usufructuary.

Art. 718. The usufructuary has the right to the possession, use, administration and receipt (*percepção*) of the fruits.

Art. 719. When the usufruct is imposed (*recae*) upon titles of credit, the usufructuary has the right, not only to collect the respective debts, but also to make use of (*empregar-lhes*) the amount received for them. This application, however, is upon his own account and risk; and, when

the usufruct ceases, the proprietor may refuse to accept (*recusar*) the new titles, and demand the money in specie.

Art. 720. When the usufruct is imposed upon bonds (*apolices*) of the public debt or similar titles, of variable quotation, their alienation can only be effected through previous agreement between the usufructuary and the owner.

Art. 721. Saving the right acquired by another, the usufructuary is entitled to (*faz seus*) the natural fruits pending when the usufruct commences, without the charge of paying the expenses of production.

Single Paragraph. The natural fruits, however, pending at the time the usufruct ceases, belong to the owner, also without compensation of the expenses.

Art. 722. The increase (*crias*) of animals belongs to the usufructuary, deducting as many as are required to restore the number of head of cattle existing when the usufruct began.

Art. 723. The civil fruits, matured at the initial date of the usufruct, belong to the proprietor, and to the usufructuary those matured at the date on which the usufruct ceases.

Art. 724. The usufructuary may enjoy (*usufruir*) the estate (*predio*) in person or through a lessee, but he cannot change the kind of cultivation, without the license of the proprietor or express authorization in the title; unless by some other title, as that of father, or husband, he has (*the couber*) such right.

Art. 725. If the usufruct is of forests, or mines, the owner and the usufructuary may prescribe the extent of the enjoyment and the manner of exploration.

Art. 726. Things which are consumed in use belong at once to the usufructuary, the latter being, however, obliged to restore, when the usufruct terminates, the equivalent in kind, quality and quantity, or if this is not possible, their value, at the price current at the time of the restitution.

Single Paragraph. If, however, the said things are appraised in the title constituting the usufruct, the usufructuary is obliged, saving a clause to the contrary, to pay for them at the price of the appraisalment.

Art. 727. The usufructuary has no right to the part of the treasure found by another, nor to the price paid by the neighbor of the usufructed estate to obtain party-interest (*meação*) in a wall, fence, mound or hedge (Art. 643).

Art. 728. The provision of the second part of the preceding Article does not apply (*não procede*), when the usufruct is imposed upon (*recair sobre*) the universality or the quota part of property.

Section III. Of the Obligations of the Usufructuary.

Art. 729. The usufructuary, before assuming the usufruct, shall, at his cost, inventory the property which he receives, determining the condition (*estado*) in which they then are (*se acham*), and shall give bond, fidejussory or real, if the owner so requires, to care for its preservation and to deliver it at the termination of the usufruct.

Art. 730. The usufructuary, who does not wish or cannot give a sufficient bond, shall lose the right to administer the usufruct; and, in this case, the property shall be administered by the owner, who shall be obliged, under bond, to deliver its returns to the usufructuary, after deducting the expenses of the administration, among which shall be included the amount taxed by the judge as remuneration of the administrator.

Art. 731. Bond (*caução*) is not required of:

I. The donor, who reserves to himself the usufruct of the thing given.

II. Parents, as usufructuaries of the property of their minor children.

Art. 732. The usufructuary is not obliged to pay for the deterioration resulting from the regular exercise of the usufruct.

Art. 733. The usufructuary must bear:

I. The ordinary expenses of the preservation of the property in the condition in which he received it.

II. The rentals (*fóros*), pensions, and the real taxes (*impostos*) due for the possession, or income, of the usufructed thing.

Art. 734. The owner must bear the extraordinary repairs and those which are not of small (*modico*) cost; but the usufructuary shall pay him the interest on the capital expended for such as are necessary to the preservation, or which increase the returns, of the usufructed thing.

Single Paragraph. The expenses are not considered small (*modicas*) which exceed two-thirds of the net income of one year.

Art. 735. If the thing is insured, the usufructuary must pay the insurance premiums during the usufruct.

§ 1. If the usufructuary took out (*fizer*) the insurance, the proprietor is entitled to the right resulting from it against the insurer.

§ 2. In either event (*qualquer hypothese*), the right of the usufructuary is subrogated in the value of the insurance money paid.

Art. 736. If the usufruct is of a single (*singular*) thing,

or a part of it, the usufructuary shall only respond for the interest of the debt, which it guarantees, when this burden (*onus*) is expressed in the respective title.

If it is of a patrimony, or a part thereof, the usufructuary shall be obliged for the interest of the debt which encumbers (*onerar*) the patrimony, or the part thereof upon which the usufruct was imposed (*recaia*).

Art. 737. If a building subject to usufruct is destroyed without the fault of the proprietor, he shall not be obliged to rebuild it, nor shall the usufruct be re-established, if the proprietor should reconstruct the estate (*predio*) at his own cost; but if it was insured, the indemnization paid is subject to the onus of the usufruct.

If the insurance money is applied to the reconstruction of the estate, the usufruct shall be re-established.

Art. 738. The indemnization paid is also subrogated to the onus of the usufruct, in place of the estate, if it is expropriated, or the amount of the damage is reimbursed by the third person responsible, in the case of damage (*danificação*) or loss.

Section IV. Of the Extinction of the Usufruct.

Art. 739. The usufruct is extinguished:

- I. By the death of the usufructuary.
- II. By the end (*termo*) of its duration.
- III. By the cessation of the cause from which it originated.
- IV. By the destruction of the thing, if it is not fungible, the provisions of Arts. 735, 737, 2nd part, and 738 being observed.
- V. By consolidation.
- VI. By prescription.
- VII. By the fault (*culpa*) of the usufructuary, when

he alienates or deteriorates the property, or lets it go to ruin by not making the repairs for its preservation.

Art. 740. When the usufruct is constituted in favor of two or more individuals, it shall be extinguished part by part with relation to each of those who may decease, unless, by express stipulation, the share of the deceased should go (*couber*) to the survivors.

Art. 741. The usufruct constituted in favor of a juridical person is extinguished with the latter, or if the latter should continue (*perdurar*), in one hundred years from the date on which it began to be exercised.

CHAPTER V.

OF USE (*Uso*).

Art. 742. The holder of a use (*usuuario*) shall enjoy the benefit (*utilidade*) of the thing, so far as the personal necessities of himself and his family require.

Art. 743. The personal necessities of the holder shall be estimated (*avaliar*) in accordance with his social condition and the place where he lives.

Art. 744. The necessities of the family of the holder of the use include:

- I. Those of his spouse.
- II. Those of his unmarried children, although illegitimate.
- III. Those of the persons of his domestic service.

Art. 745. The provisions relative to usufruct are applicable to use, where not contrary to its nature.

CHAPTER VI.

OF HABITATION (HABITAÇÃO).

Art. 746. When the use (*uso*) consists in the right to inhabit gratuitously the house of another, the person entitled (*titular*) to this right cannot rent it out, or lend it, but may simply occupy it with his family.

Art. 747. If the real right of habitation is conferred upon more than one person, any one of them, who inhabits the house alone (*sósinha*), shall not have to pay rent to the other or others, but he cannot prevent them from exercising, if they wish, the right which they also have to inhabit it.

Art. 748. The provisions concerning usufruct are applicable to habitation, where not contrary to its nature.

CHAPTER VII.

OF INCOME CHARGED UPON IMMOVABLES.

Art. 749. In case of expropriation for public necessity or utility of an estate subject to the constitution of income (Arts. 1424 to 1431), the price of the obligated immovable shall be applied to constitute another. The money received from insurance on it shall, in analogous cases, be applied in the same way.

Art. 750. The payment of the income constituted upon an immovable rests by law (*incumbe de pleno direito*) upon the acquirer of the encumbered estate. This obligation extends to the income (*rendas*) matured before the alienation, saving the regressive right of the acquirer against the alienor.

Art. 751. The immovable subject to the payment (*prestações*) of income may be redeemed, by the debtor paying

in specie a capital, the income of which, calculated at the legal rate of interest, will assure an equivalent income to the creditor.

Art. 752. In case of failure (*fallencia*), insolvency or execution of the encumbered estate, the creditor of the income has preference over the other creditors to recover (*haver*) the capital indicated in the preceding Article.

Art. 754. In case of transmission of the encumbered estate to many successors, the real onus of the income (*renda*) continues to encumber it in all its parts.

CHAPTER VIII.

OF THE REAL RIGHTS OF GUARANTY.

Art. 755. In debts guarantied by pledge (*penhor*), antichresis or mortgage, the thing given in guaranty is subject, by real lien (*vinculo*), to the performance of the obligation.

Art. 756. Only one who can alienate can mortgage, give in antichresis, or pledge (*empenhar*). Only things that can be alienated can be given in pledge, antichresis or mortgage.

Single Paragraph. The supervening ownership (*dominio*) revalidates, from its inscription, the real guaranties established by one who possessed the thing in title of proprietor.

Art. 757. The thing common to two or more owners cannot be given in real guaranty, in its entirety, without the consent of all; but each one may give in real guaranty the part which he has, if the thing is divisible, and only with respect to that part will the indivisibility of the guaranty be effective (*vigorará*).

Art. 758. The payment of one or more installments (*prestações*) of the debt does not imply a corresponding

release (*exoneração*) of the guaranty, although this embraces several properties, saving express provision in the title, or in the receipt (*quitação*).

Art. 759. The creditor by mortgage or pledge has the right to have execution upon (*executir*) the thing mortgaged or pledged, and to preference in payment over other creditors, observing, in respect to the mortgage, the priority of inscription.

Single Paragraph. The debt arising from the wages of agricultural laborers is excepted from this rule, and they shall be paid, in preference to any other debts (*creditos*), from the product of the harvest to which they have contributed with their labor.

Art. 760. The antichretic creditor has the right to retain the thing in his power as long as the debt is not paid. This right is extinguished, however, after thirty years from the day of the transcription.

Art. 761. The contracts of pledge, antichresis and mortgage shall declare, under penalty of not being valid against third persons:

- I. The total of the debt, or its estimated amount.
- II. The period fixed for payment.
- III. The rate of interest, if any.
- IV. The thing given in guaranty, with its description.

Art. 762. The debt is considered matured (*vencida*):

I. If the guaranty depreciates (*desfaltar*) through the deterioration or depreciation of the thing given as security, and if the debtor, being notified to do so, does not make it good (*reforçar*).

II. If the debtor becomes insolvent, or fails.

III. If the installments (*prestações*) are not punctually paid, whenever the payment is stipulated in this manner.

In this event, the subsequent receipt of the overdue in-

stallment implies the renouncement by the creditor of his right of immediate execution.

IV. If the object given in guaranty perishes.

V. If the thing given in guaranty is expropriated, in which case the part of the price which is necessary for the integral payment of the creditor shall be deposited.

§ 1. In the event that the object given as security (*em garantia*) perishes or deteriorates, the indemnity, if insurance money (*seguro*) or if there is some one responsible for the damage (*damno*), shall be subrogated for the thing destroyed or deteriorated, for the benefit of the creditor, who shall have a lien upon it until he is fully reimbursed.

§ 2. In the cases of nos. IV and V, the mortgage shall only mature before the stipulated period, if the accident (*sinistro*) or expropriation affects (*recair sobre*) the object given in guaranty, and this does not embrace other objects; in the contrary case, the reduced debt subsists with the respective guaranty, upon the other property, which is not expropriated, injured or destroyed.

Art. 763. The anticipated maturity of the debt, in the hypotheses of the preceding Article, does not imply that of the interest corresponding to the conventional time yet to run (*por decorrer*).

Art. 764. Except by express clause, the third person who furnishes a real guaranty for the debt of another is not obliged to substitute it, or to make it good (*reforçal-a*), when, without his fault, it is lost, deteriorates, or depreciates (*desvalie*).

Art. 765. The clause is void which authorizes the pignorative, antichretic or mortgage creditor to retain (*ficar com*) the object of the guaranty, if the debt is not paid at maturity.

Art. 766. The successors of the debtor cannot redeem (*remir*) partially the pledge or the mortgage in the proportion of their shares; any of them, however, may do it in whole.

Single Paragraph. The heir or successor who so redeems (*remissão*), is subrogated to the rights of the creditor for the quotas which he has satisfied.

Art. 767. If, when the pledge is sold in execution (*excusado*), or the mortgage is foreclosed (*executada*), the product is not sufficient for the payment of the debt and judicial expenses, the debtor shall continue personally obligated for the balance (*restante*).

CHAPTER IX.

OF PLEDGE (PENHOR).

Section I. General Dispositions.

Art. 768. The pledge (*penhor*) is constituted by effective tradition which the debtor, or some one for him, makes to the creditor, or one who represents him, of a movable object, susceptible of alienation, as security for the debt.

Art. 769. The pledge can only be constituted by the possession of the movable thing by the creditor, except in case of agricultural or cattle (*pecuarios*) pledges, in which the object remains in the power of the debtor, by effect of the clause "*constituti*".

Art. 770. The instrument creating the conventional pledge shall determine precisely the value of the debt and the object pledged, in terms which distinguish it from all others of its kind (*dos seus congeneres*).

When the object of the pledge is a fungible thing, it is sufficient to declare its quality and quantity.

Art. 771. If the contract is made by means of a private

instrument, it shall be signed by the parties and in duplicate, a copy remaining with each of the contracting parties, either of whom may take it to be transcribed.

Art. 772. The pignorative creditor cannot, when the debt is paid, refuse the delivery of the thing to the pledgor.

He may retain it, however, until he is indemnified for the expenses, duly proven, which he has had, if not occasioned by his fault.

Art. 773. The creditor may likewise require the debtor to satisfy the damage (*prejuizo*) which he may have suffered from the defect (*vicio*) of the thing pledged.

Art. 774. The pignorative creditor is obliged, as depositary:

I. To employ in the care (*na guarda*) of the pledge the diligence required by the nature of the thing.

II. To deliver it with its respective fruits and accessions when the debt is paid, observing the provisions of the preceding Articles.

III. To deliver what may remain of the price, when the debt is paid, either by judicial sale (*excussão*) or by amicable sale, if the contract expressly permits it or the debtor authorizes it by special power of attorney (*procuração*).

IV. To reimburse the owner for the loss or deterioration for which he may be at fault.

Art. 775. In the case of the preceding Article, no. IV, the amount of the responsibility of the creditor may be set off (*compensar-se*) against the debt, up to an equal amount.

Section II.—Of the Legal Pledge.

Art. 776. Pignorative creditors, independently of agreement, are:

I. Innkeepers (*hospedeiros*), liverymen (*estalajadeiros*),

and those who provide lodging or food (*fornecedores de pousada ou alimento*), upon the baggage, movables, jewels or money which their guests or customers (*consumidores ou freguezes*) have with them in the respective houses or establishments, for the expenses or consumption which they have there made.

II. The owner of a rustic or urban estate, upon the movable property which the renter or hirer has furnished upon (*guarnecendo*) the said estate, for the hire or rental.

Art. 777. The account of the debts enumerated in the preceding Article, no. I, shall be made up (*extrahida*) in accordance with the printed tariff (*tabella*), previously and openly posted in the house, of the prices of the entertainment (*hospedagem*), of the board (*pensão*) or of the goods furnished, under penalty of the nullity of the pledge.

Art. 778. In each of the cases of Art. 776, the creditor may take as guaranty one or more objects, up to the value of the debt.

Art. 779. The creditors embraced in the preceding Article may make the pledge effective, before having recourse to the judicial authority, whenever there may be danger in delay.

Art. 780. Upon taking the pledge, the creditor shall immediately (*acto continuo*) request its approval (*homologação*), by presenting the itemized account of the expenses of the debtor, the tariff of prices, together with a statement of the objects retained, and asking citation to him to pay within twenty-four hours or plead his defense.

Section III. Of the Agricultural Pledge.

Art. 781. The object of the agricultural pledge may be:

I. Aratory machines and instruments, or those of locomotion.

II. Crops pending, or under way of formation in the year of the contract, whether the result of previous cultivation or of the spontaneous production of the soil.

III. Fruits stored up in natural condition (*em ser*), or worked up and prepared (*beneficiados e acondicionados*) for sale.

IV. Cut firewood, or logs (*madeira das mattas*) prepared for cutting.

V. Animals used in the ordinary service of the agricultural establishment.

Art. 782. The agricultural pledge can only be contracted for the period of one year, which may be subsequently extended for six months.

Art. 783. If the estate (*predio*) is mortgaged, the agricultural pledge cannot be constituted upon it, under penalty of nullity, without the consent of the mortgage creditor, given by him in the very instrument constituting the pledge.

Art. 784. In the pledge of animals, the instrument, under penalty of nullity, shall designate them with the greatest precision, specifying particularly the place where they are, and their purpose (*o destino que tiverem*).

Art. 785. The debtor cannot sell the cattle (*gado*) pledged, without the previous written consent of the creditor.

Art. 786. When the debtor pretends to sell the cattle pledged, or, through negligence, threatens to prejudice the creditor, the latter may require that the animals be deposited under the care of a third person, or demand that the debt be paid immediately (*in-continenti*).

Art. 787. Animals of the same kind, bought to substitute dead ones, are subrogated in the pledge.

Single Paragraph. This substitution is presumed, but it

will not avail against third persons, if it does not appear (*constar*) by additional mention in (*ao*) the respective contract.

Art. 788. The pledge of animals does not admit a period greater than two years, but it may be extended (*prorogado*) for an equal period, the extension being noted (*averbando-se*) in the respective title.

Single Paragraph. When the extension has expired, the pledge may be in execution sold (*executado*), if it is not reconstituted.

Section IV. Of Surety Bonds of Securities (Caução de Títulos de Credito).

Art. 789. The surety bond (*caução*) constituted by registered or "to order" certificates (*títulos nominativos*) of the Public Debt of the Union, of the States or of the Municipios, is likened (*equipara-se*) to a pledge (*penhor*) and is good as against third persons from the time it is transcribed, although such certificates (*títulos*) have not been delivered to the creditor.

Art. 790. The bond constituted by titles of personal credit is also likened to the pledge, but with the modifications of the following Articles.

Art. 791. This bond becomes effective upon the tradition of the title to the creditor, and shall be proven by writing, in the terms of Articles 770 and 771.

Art. 792. The creditor by this bond has the right:

I. To preserve and recover the possession of the titles pledged (*caucionados*), by all civil or criminal proceedings (*meios*) against any one who detains them (*o detentor*), including the owner.

II. To notify (*fazer intimar*) the debtor of the titles

pledged (*caucionados*) not to pay his creditor, so long as the bond (*caução*) continues in force (*durar*).

III. To exercise (*usar*) the proper actions, recourses and exceptions in order to assure his rights, as well as those of the bonding creditor (*credor caucionante*), as if he were the special procurator of the latter.

IV. To receive the amount of the pledged titles, and to restore them to the debtor, when the latter settles (*solver*) the obligation guaranteed by them.

Art. 793. In the case of the preceding Article, no. IV, the secured (*caucionado*) creditor shall be responsible, as depositary, to the bonding (*caucionario*) creditor, for what he receives beyond what was due him.

Art. 794. The debtor of the pledged title (*titulo caucionado*), as soon as he receives the notice of Art. 792, no. II, or has knowledge of the bond, cannot receive an acquittance from his creditor.

Art. 795. He who, being a creditor in a title of credit, acquits (*quitar*) the debtor after the title is pledged (*caucionado*), shall be obliged, by that fact, to settle immediately the debt in guaranty of which the bond was given; and the debtor, who, knowing that his title of debt is pledged (*caucionado*), accepts an acquittance from the bonding creditor (*credor caucionante*), shall respond solidarily, with the latter, for the losses and damages to the pledgee (*caucionado*).

Section V. Of the Transcription of the Pledge.

Art. 796. The agricultural pledge shall be transcribed in the register of immovables.

Single Paragraph. So long as it is not cancelled, the transcription continues to be effective (*valer*) against third persons.

Art. 797. The pledge of titles listed on the stock exchange (*titulos da bolsa*) shall be recorded (*averbar-se-á*) in the proper districts (*repartições competentes*), or in the place of business (*séde*) of the company issuing them (*associação emissora*).

Art. 798. The creditor who accepts in pledge (*caução*) titles not yet fully paid (*integrados*), may, upon any subsequent calls being made, at once have execution against the debtor, if he does not pay the call, or may pay it under protest.

Art. 799. If, in the terms of the preceding Article, the call is paid under protest, the amount of it shall be added to the debt, and the creditor has the right to immediate execution against the debtor.

Art. 800. The creditor, or the debtor, either one in the absence of the other contracting party, may have the pledge transcribed, upon presenting the respective instrument in the form of Art. 135, if it is private.

Art. 801. The debtor may have the pignorative instrument cancelled, upon presenting the acquittance of the creditor, with the signature acknowledged, if the document is private (Art. 1093).

Single Paragraph. The same right pertains to the acquirer of the pledge by adjudication, purchase, succession or remission, upon exhibiting his title.

Section VI. Of the Extinction of the Pledge.

Art. 802. The pledge is ended (*resolve-se*) :

- I. By the obligation being extinguished.
- II. By the thing perishing.
- III. By the creditor renouncing.
- IV. By judicial adjudication, redemption, or the

amicable sale of the pledge, if expressly permitted by the contract or if it be authorized by the debtor (Art. 774, no. III), or by the creditor (Art. 785).

V. By the characters of creditor and owner of the thing becoming merged (*confundindo-se*) in the same person.

VI. By judicial adjudication, redemption, or the sale of the pledge authorized by the debtor.

Art. 803. The renouncement of the creditor is presumed, when he consents to the private sale of the pledge without reservation of price, when he restores its possession to the debtor, or when he consents to its substitution by another guaranty.

Art. 804. Where the merger (*confusão*) affects only a part of the pignorative debt, the pledge shall subsist entire as to the rest.

CHAPTER X.

OF ANTICHRESIS.

Art. 805. The debtor, or another for him, may deliver to the creditor an immovable, and grant him the right to receive the fruits and income in compensation for the debt.

§ 1. It is permitted to stipulate that the fruits and income of the immovable, in their totality, may be received by the creditor on account only of the interest.

§ 2. The immovable mortgaged may be given in antichresis by the debtor to the mortgage creditor; also the immovable subject to antichresis may be mortgaged by the debtor to the antichretic creditor.

Art. 806. The antichretic creditor may enjoy (*fruir*) the immovable directly, or, saving pact to the contrary, rent it to a third person, retaining, in the latter case, the right to the retention of the immovable until paid.

Art. 807. The antichretic creditor responds for the deteriorations which the immovable may suffer through his fault, and for the fruits which, through his negligence, he may fail to receive.

Art. 808. The antichretic creditor may vindicate his rights against the acquirer of the immovable, the chirographic creditors and the hypothecary creditors posterior to the transcription of the antichresis.

§ 1. If, however, he should have execution (*executar*) of the immovable for non-payment of the debt, or permit another creditor to execute it, without opposing his right of retention against the person executing it (*exequente*), he shall not have a preference upon the price.

§ 2. Neither shall he have it upon the insurance indemnity, when the estate is destroyed, nor upon that of the expropriation, if it is expropriated.

CHAPTER XI.

OF MORTGAGE (HYPOTHECA).

Section I. General Dispositions.

Art. 809. The law of the mortgage (*hypotheca*) is the civil law, and the jurisdiction civil, although the debt may be commercial, and the parties merchants.

Art. 810. The object of the mortgage may be:

I. Immovables.

II. The accessories of the immovables jointly with them.

III. The direct ownership (*dominio directo*).

IV. The beneficial ownership (*dominio útil*).

V. Railroads.

VI. Mines and quarries, independently of the soil in which they are found.

VII. Ships (Art. 825).

Art. 811. The mortgage embraces all the accessions, improvements and constructions of the immovable.

Real encumbrances (*onus*) constituted and transcribed previously to the mortgage, subsist upon the same immovable.

Art. 812. The owner of the mortgaged immovable, may, by a new title, constitute another mortgage upon it, in favor of the same creditor or of another.

Art. 813. Except in case of the insolvency of the debtor, the creditor of the second mortgage, cannot, although it is matured, have execution against the immovable before the maturity of the first.

Single Paragraph. The debtor is not considered insolvent by reason of failure to pay obligations guaranteed by mortgages subsequent to the first.

Art. 814. The prior mortgage may be redeemed (*remida*), when it matures, by the creditor of the second, if the debtor does not offer to redeem it (*remil-a*).

§ 1. In order to redeem it, in this case, the second creditor shall consign the amount of the debt and of the judicial expenses, in the event that execution is pending, notifying the prior creditor to take it up (*levantar-a*) and the debtor to redeem it (*remil-a*), if he wishes.

§ 2. The second creditor, who redeems the prior mortgage, becomes *ipso facto* subrogated to the rights of the latter, without prejudice to the rights which he has against the common debtor.

Art. 815. The acquirer of the mortgaged immovable has likewise the right to redeem it.

§ 1. If the acquirer wishes to avail himself (*forrar-se*) of the effects of the execution of the mortgage, he shall,

within thirty days, judicially notify the hypothecary creditors of his contract, proposing as the minimum, for its redemption, the price for which he acquired the immovable.

The notification shall be executed in the inscribed domicile (Art. 846, Single Paragraph), or by edicts, if the creditor is not there.

§ 2. The creditor when notified, may, within the period assigned for opposition, require that the immovable be sold at public auction (*licitado*).

Art. 816. Permitted to bid (*licitar*), are:

- I. The hypothecary creditors.
- II. The sureties (*fiadores*).
- III. The acquirer himself.

§ 1. If the sale at auction is not required, the price of the acquisition or that which the acquirer proposed, shall be taken as definitely fixed for the redemption of the immovable, which, when the said price is paid or deposited, shall remain free of the mortgage.

§ 2. If the acquirer does not notify the mortgage creditors, within the thirty days of Art. 815, § 1, he is liable (*obligado*) for:

- I. The losses and damages suffered by (*para com*) the mortgage creditors.
- II. The judicial costs and expenses.
- III. The difference between the appraisement and the adjudication, in the event that the latter is effected.

§ 3. The immovable shall be levied upon (*penhorado*) and sold for the account of the acquirer, although he may wish to pay or deposit the price of the sale, or of the appraisement, unless the creditor consents, or if the price of the sale or of the appraisement is sufficient to satisfy the mortgage, or unless the acquirer redeems it.

The appraisement shall never be for a price less than that of the sale.

§ 4. The acquirer, who suffers expropriation of the immovable by auction-sale, or levy; or who pays the mortgage; or who disburses in payment of the mortgage, on account of the adjudication or auction, an amount exceeding that of the purchase; or who bears the judicial costs and expenses, shall have a regressive action against the vendor.

§ 5. The legal mortgage is redeemable (*remivel*) in the same form as are special mortgages, the persons competent in accordance with the legislation in force figuring as the parties to whom it belongs (*figurando pelas pessoas, a que pertencer*).

Art. 817. By means of a simple notation (*averbação*), requested by both parties, the mortgage may be extended (*prorogar-se*) until the completion of (*perfazer*) thirty years from the date of the contract. After the completion of thirty years, the contract of mortgage can only subsist by being reconstituted by a new title and new inscription; and, in this case, the precedence which it then had shall be maintained.

Art. 818. It is lawful for the interested parties to set forth (*fazer constar*) in the instruments (*escripturas*) the value agreed between themselves of the immovables mortgaged, which value shall be the basis for auction-sales, adjudications and redemptions, and dispense with the appraisement.

Redemptions shall not be permitted before the first public sale (*praça*) is held (*realizada*), nor after the signature of the order (*auto*) of public sale (*arrematação*).

Art. 819. The creditor in a legal mortgage, or his rep-

representative, upon showing the insufficiency of the immovables specified, may require that it be reinforced with others, subsequently acquired by the person responsible.

Art. 820. The legal mortgage may be substituted by a bond (*caução*) of titles of the public Federal or State debt, received at the value of their minimum quotation for the current year.

Art. 821. In the case of the bankruptcy (*fallencia*) of the hypothecary debtor, the right of redemption devolves upon the estate (*massa*), to the prejudice of which the creditor cannot prevent the payment of the price for which the immovable was appraised. The balance (*restante*) of the mortgage debt shall enter into concourse with the chirographic debts.

In case of insolvency, that right belongs to the creditors' meeting (*aos credores emconcurso*).

Art. 822. In case of the insolvency or bankruptcy of the debtor, the mortgage creditor may require the adjudication of the immovable in payment of his debt, although the property is appraised in an amount less than the debt, provided that he gives a receipt for its full amount (*pela sua totalidade*).

Art. 823. Mortgages executed, in guaranty of prior debts, within forty days preceding the declaration of bankruptcy (*quebra*) or the opening of the concourse of preference, are void, in benefit of the estate (*massa*).

Art. 824. The execution creditor (*exequente*) has the right to proceed with the execution of the sentence against the acquirers of the property of the execution debtor (*condemnado*); but, as against third persons (*para ser opposto a terceiros*), and without importing preference, it depends upon inscription and detailed description (*especialização*):

Art. 825. Ships (*navios*) are susceptible of the contract of mortgage, although yet in construction.

Mortgages of ship shall be governed by the provisions of this Code and by special regulations which may be issued upon the subject.

Art. 826. The execution of the mortgaged immovable shall be by executive action. The judicial sale of immovables encumbered by mortgages, duly inscribed, shall not be valid, unless the several mortgage creditors who are not in any way parties to the execution, have been judicially notified.

Section II. Of the Legal Mortgage.

Art. 827. The law grants a mortgage:

I. To the married woman, upon the immovables of the husband, to guaranty the dowry and her other private property subject to the marital administration.

II. To the descendants, upon the immovables of the ascendant who administers their property.

III. To the children, upon the immovables of the father, or of the mother, who contracts another marriage before making an inventory of the previous conjugal estate (Art. 183, no. XIII).

IV. To persons who have not the administration of their property, upon the immovables of their guardians or curators.

V. To the Public Treasury (*Fazenda*), Federal, State or Municipal, upon the immovables of the treasurers, collectors, administrators, exactors, directors (*prepostos*), revenue officers (*rendeiros*) and contractors of the revenue and sureties.

VI. To the injured person (*offendido*) or to his heirs, upon the immovables of the wrongdoer (*delinquente*), for

the satisfaction of the damage caused by the wrongful act (*delicto*) and the payment of the costs (Art. 842, no. I).

VII. To the Public Treasury (*Fazenda*), Federal, State or Municipal, upon the immovables of the delinquent, for the performance of pecuniary penalties and the payment of the costs (Art. 842, no. II).

VIII. To the co-heir for guaranty of his share or part (*torna*) of the partition, upon the immovable adjudicated to the heir who acquires the property subject to satisfying the shares of the co-heirs (*herdeiro reponente*).

Art. 828. Legal mortgages, of whatever nature, shall not in any case be valid against third persons, if not inscribed and exactly described (*especializadas*).

Art. 829. When the property of the wrongdoer (*criminoso*) is not sufficient for the full settlement of the obligations of Art. 827, nos. VI and VII, the satisfaction of the injured person (*offendido*) and his heirs shall be preferred to the pecuniary penalties and judicial costs.

Art. 830. The inscription of the mortgage is good (*vale*) so long as the obligation endures; but the description of property (*especialização*) must be renewed at the end of thirty years.

Section III. Of the Inscription of the Mortgage.

Art. 831. All mortgages shall be inscribed in the register of the place of the immovable, or if the instrument (*título*) refers to more than one, in that of each of them.

Art. 832. For the inscription of mortgages, there shall be the necessary books in each office (*cartório*) of the register of immovables.

Art. 833. The inscriptions and notations (*averbações*) in the books of mortgages, shall follow the order in which

they are requested, this being indicated (*verficando-se*) by their successive numeration in the protocol.

Single Paragraph. The number of order determines the priority, and this the preference between the mortgages.

Art. 834. When the official has a doubt about the legality of the inscription requested, he shall declare it in writing to the person requesting it (*requerente*), after mentioning, in the form of an annotation, the request in the appropriate book.

Art. 835. If the doubt, within thirty days, is adjudged unfounded (*improcedente*), the inscription shall be made with the same number that it would have at the date of the annotation. In the contrary case, this being disregarded (*desprezada*), the inscription shall receive the number corresponding to the date on which it is again requested.

Art. 836. Two mortgages, or one mortgage and another real right, upon the same immovable, in favor of different persons, shall not be inscribed on the same day, except upon determining precisely the hour in which each of the instruments (*escripturas*) was made (*se lavrou*).

Art. 837. When, before the first is inscribed, a second mortgage is presented to the official of the register to be inscribed, he shall suspend (*sobrestará*) the inscription of the latter, after making an annotation of it, for thirty days, waiting for the interested party to inscribe first the preceding one.

Art. 838. The interested parties have the right, upon exhibiting the copy (*traslado*) of the instrument (*escriptura*), to require the inscription of the mortgage; it being especially incumbent upon the persons determined in the following Articles, to secure (*promover*) the inscription of the legal mortgage.

Art. 839. It is incumbent upon the husband, or the father, to require the inscription and specialization of the legal mortgage of the married woman.

§ 1. The public official who makes (*lavarar*) the instrument (*escriptura*) of dowry, or prepares (*lançar em nota*) the statement (*relação*) of the private property of the wife, shall communicate it *ex-officio* to the official of the register of immovables.

§ 2. In the event that the husband or father does not require the inscription of this mortgage, the donor, the wife herself, and any of her relatives in order of succession (*parentes successíveis*), are considered interested parties to require it.

Art. 840. The duty to require the inscription and specialization of the legal mortgage of incapables, is incumbent upon:

I. The father, mother, guardian, or curator, before assuming the administration of the respective property, and in default of these, the Ministerio Publico.

II. The maker of the inventory (*inventariante*), or the executor (*testamenteiro*), before delivering the legacy or the inheritance.

Art. 841. The official (*escrivão*) of the inventory, upon the signing of an undertaking (*termo*) of guardianship or curatorship, shall, *ex-officio* and as promptly as possible, remit a copy of it to the official of the register of immovables.

Single Paragraph. In the inscription of this mortgage, any successory relative of the incapable is considered an interested party.

Art. 842. The inscription of the legal mortgage of the

injured person (*offendido*), must be made by himself, or this duty is incumbent:

I. If he is incapable, upon his guardian, or curator, for the purposes stated in Art. 827, no. VI.

II. Upon the Ministerio Publico to comply with the provisions of Art. 827, no. VII.

Art. 843. Those interested in the inscription of the above mortgages may personally require it or request the official action of the Ministerio Publico.

Art. 844. The inscription of the mortgage of the property of those responsible to the Public Treasury shall be required by themselves, and in their default, by the fiscal procurators and representatives.

Art. 845. The persons having the duty of securing the inscription and specialization of legal mortgages, are liable for losses and damages by their omission.

Art. 846. The inscription of the mortgage, legal or conventional, shall declare:

I. The name, domicile and profession of the creditor and of the debtor.

II. The date, the nature of the title, the value of the credit and that of the thing, or its estimated value, fixed by agreement between the parties, the term (*prazo*) and the interest stipulated.

III. The situation, the denomination and the characteristics of the thing mortgaged.

Single Paragraph. The creditor, besides his real domicile, may designate another where he may also be cited.

Art. 847. Chirographary creditors and those by mortgage not inscribed in first place and without competition (*concorrença*), can only invalidate the effects of the first

mortgage, entitled to priority by respective registry, by means of the ordinary action of nullity or rescission.

Art. 848. Mortgages are only good (*valem*) against third persons from the date of the inscription.

So long as not inscribed, mortgages only subsist between the contracting parties.

Section IV. Of the Extinction of the Mortgage.

Art. 849. The mortgage is extinguished:

I. By the disappearance of the principal obligation.

II. By the destruction of the thing or the termination (*resolução*) of the ownership (*domínio*).

III. By the renouncement of the creditor.

IV. By redemption (*remissão*).

V. By final sentence (*passada em julgada*).

VI. By prescription.

VII. By judicial sale or adjudication.

Art. 850. The extinction of the mortgage only becomes effective against third persons after it is noted (*averbada*) in the appropriate register.

Art. 851. The inscription shall be cancelled, in each of the cases of the extinction of the mortgage, upon presentation of the proper proof, or, independently of this, at the request of both the parties, if they are capable and known to the official of the register.

Section V. Of the Mortgage of Railroads (Vias Ferreas).

Art. 852. Mortgages of railroads (*estradas de ferro*) shall be registered in the municipio of the initial station of the line affected.

Art. 853. The hypothecary creditors cannot embarrass the operation (*exploração*) of the line, nor interfere with

(*contrariar*) the changes which the administration may make in the roadbed, in its dependencies, or in its material.

Art. 854. The mortgage shall be limited to the line or lines specified in the instrument (*escritura*) and to the operating material affected, in the condition in which they were at the time of its execution. Nevertheless, the mortgage creditors may object to the sale of the road, of its lines, of its branches, or of a considerable part of its operating material, as well as to its fusion with another company (*empresa*), provided that the guaranty of the debt seems to them to be weakened (*emfraquecida*).

Art. 855. In the foreclosures (*execuções*) of these mortgages, a deed shall not be made (*não se passará carta*) to the highest bidder, or to the adjudicatory creditor, before notifying the representative of the National, or State Treasury, who is entitled to the preference (*a que tocar a preferencia*), so that, within fifteen days, he may exercise it, if he wishes, by paying the price of the public sale, or of the fixed adjudication.

Section VI. *Of the Register of Immovables.*

Art. 856. The register of immovables comprehends:

I. The transcription of the titles of transmission of the ownership (*propriedade*).

II. The transcription of the titles enumerated in Art. 532.

III. The transcription of the titles by which are constituted (*constitutivos*) real burdens (*onus reaes*) upon things of another.

IV. The inscription of mortgages.

Art. 857. If the title of transmission is gratuitous, the transcription may be required (*promovida*):

I. By the acquirer himself.

II. By whoever represents him in law.

III. By the grantor himself, with proof of the acceptance of the beneficiary (*beneficiado*).

Art. 858. The transcription of the title of transmission of the direct ownership (*dominio directo*) benefits (*aproveita*) the person entitled (*titular*) to the beneficial ownership (*dominio util*), and vice-versa.

Art. 859. The real right is presumed to belong to the person in whose name it was inscribed, or transcribed.

Art. 860. If the entry (*teor*) of the register of immovables does not express the truth, the prejudiced party may demand (*reclamar*) that it be rectified.

Single Paragraph. So long as the title of transmission is not transcribed, the alienor continues to be held as the owner of the immovable, and responds for its charges (*encargos*).

Art. 861. The inscriptions, or transcriptions, shall be made in the register corresponding to the place where the immovable is.

Art. 862. Unless otherwise agreed, the grantee bears the expenses of the transcription of titles of transmission of ownership, and the debtor those of the inscription, or transcription, of real onus.

BOOK III.

OF THE LAW OF OBLIGATIONS

TITLE I.

Of the Conditions of Obligations.

CHAPTER I.

OF OBLIGATIONS.

Section I. Of Obligations to Give a Certain Thing.

Art. 863. The creditor of a certain thing cannot be obliged to receive another, although it may be more valuable.

Art. 864. The obligation to give a certain thing embraces its accessories, although not mentioned, unless the contrary results from the title, or from the circumstances of the case.

Art. 865. If, in the case of the preceding Article, the thing is lost, without the fault of the debtor, before tradition, or pending a suspensive condition, the obligation is ended (*resolvida*) for both parties.

If the loss results from the fault of the debtor, he shall respond for its equivalent, besides the losses and damages.

Art. 866. If the thing becomes deteriorated, without the fault of the debtor, the creditor may resolve the obligation, or accept the thing with abatement of the price or value which it lost.

Art. 867. If the debtor is at fault, the creditor may require its equivalent, or accept the thing in the condition in which it is, with the right in either case, to demand indemnization of the losses and damages.

Art. 868. Until the tradition, the thing belongs to the debtor, with its improvements and increases, for which he may require an increase of the price. If the creditor does not consent, the debtor may resolve the obligation.

Single Paragraph. The fruits collected (*percebidos*) also belong to the debtor; those pending to the creditor.

Art. 869. If the obligation is to restore a certain thing, and, without fault of the debtor, it is lost before tradition, the creditor shall suffer the loss, and the obligation shall be resolved, saving to him, however, his rights up to the day of the loss.

Art. 870. If the thing is lost through the fault of the debtor, the provisions of Art. 865, Second Part, shall be enforced.

Art. 871. If the thing to be restored deteriorates without fault of the debtor, the creditor shall receive it, such as it is, without right to indemnization; if through the fault of the debtor, the provisions of Art. 867 shall be observed.

Art. 872. If, in the case of Art. 869, the thing has improved or increased, without expense or labor of the debtor, the creditor shall have the benefit (*lucrará*) of the improvement or increase without paying indemnization.

Art. 873. If the debtor employed labor or expense for the improvement or increase, the provisions of Arts. 516 to 519 shall apply.

Single Paragraph. With respect to the fruits collected, the provisions of Arts. 510 to 513 shall be observed.

Section II. Of Obligations to Give An Uncertain Thing.

Art. 874. An uncertain thing shall be indicated, at least, by its kind (*genero*) and quantity.

Art. 875. In things determined by kind and quantity,

the choice belongs to the debtor, if the contrary does not result from the title of the obligation. But he cannot give the worst thing, nor shall he be obliged to give (*prestar*) the best.

Art. 876. When the choice is made, the provisions of the preceding Section shall apply.

Art. 877. Before the choice, the debtor cannot plead (*allegar*) the loss or deterioration of the thing, although by *vis major* (*força maior*) or fortuitous event (*caso fortuito*).

CHAPTER II.

OF OBLIGATIONS TO DO.

Art. 878. In the obligation to do (*fazer*), the creditor is not obliged to accept the prestation of a third person, when it was agreed that the debtor should do it personally.

Art. 879. If the prestation of the act (*facto*) becomes impossible without the fault of the debtor, the obligation shall be resolved; if by fault of the debtor, he shall respond for the losses and damages.

Art. 880. The debtor is also under obligation to indemnify losses and damages, who refuses the prestation imposed upon him alone, or which may be demanded (*exigível*) only by him.

Art. 881. If the act (*facto*) can be executed by a third person, the creditor shall be free to order it to be executed at the cost of the debtor, if the latter refuses or delays, or to demand indemnization for losses and damages.

CHAPTER III.

OF OBLIGATIONS NOT TO DO.

Art. 882. The obligation not to do (*de não fazer*) is extinguished, when, without fault of the debtor, it becomes impossible for him to abstain from the act which he was obligated not to do (*practicar*).

Art. 883. If the debtor performs the act (*acto*) from which he obligated himself to abstain, the creditor may require him to undo (*desfaça*) it, under penalty of its being undone at his cost, and the party at fault (*o culpado*) shall be liable for the losses and damages.

CHAPTER IV.

OF ALTERNATIVE OBLIGATIONS.

Art. 884. In alternative obligations, the choice belongs to the debtor, if not otherwise stipulated.

§ 1. The debtor cannot, however, oblige the creditor to receive part in one prestation and part in another.

§ 2. When the obligation is for annual prestations, it shall be understood that the debtor has the right to exercise the option each year.

Art. 885. If one of two prestations could not be the object of an obligation, or becomes undemandable (*inexequível*), the debt shall subsist with respect to the other.

Art. 886. If, through the fault of the debtor, neither of the prestations can be performed, and the choice does not belong to the creditor, the former shall be obliged to pay the value of the one which last became impossible (*se im-*

possibilitou), besides the losses and damages which result (*que o caso determinar*).

Art. 887. When the creditor is entitled to the choice, and one of the prestations becomes impossible through the fault of the debtor, the creditor shall have the right to require either the subsisting prestation or the value of the other, with losses and damages.

If, by fault of the debtor, both become undemandable (*inexequiveis*), the creditor may demand the value of either of the two, besides indemnization for losses and damages.

Art. 888. If all the prestations become impossible, without fault of the debtor, the obligation is extinguished.

CHAPTER V.

OF DIVISIBLE AND INDIVISIBLE OBLIGATIONS.

Art. 889. Although the obligation has for its object a divisible prestation, the creditor cannot be obliged to receive, nor the debtor to pay, by parts, if it were not so agreed.

Art. 890. If there is more than one debtor or more than one creditor in a divisible obligation, this is presumed divided into as many obligations, equal and distinct, as there are creditors or debtors.

Art. 891. If there are two or more debtors, and the prestation is not divisible, each one shall be obligated for the whole debt.

Single Paragraph. The debtor who pays the debt is subrogated to the right of the creditor in relation to the other co-obligees.

Art. 892. If there is a plurality of creditors, each one of

these may demand the entire debt. But the debtor or debtors shall be discharged (*se desobrigarão*) by paying:

I. To all jointly.

II. To one, he giving bond for the ratification of the other creditors.

Art. 893. If only one of the creditors receives the prestation entire, each of the others shall have the right to demand of him in money the part to which he is entitled of the total.

Art. 894. If one of the creditors remits the debt, the obligation shall not be extinct with respect to the others; but they can only demand it less the quota of the remitting creditor.

Single Paragraph. The same rule shall be observed in the case of compromise, novation, set-off or confusion.

Art. 895. The obligation which is resolved by losses and damages, loses the quality of indivisibility.

§ 1. If, in such event (*para esse efeito*), all of the debtors are at fault, they shall all respond in equal parts.

§ 2. If one of them only is at fault, he only shall respond for losses and damages, and the others shall be exonerated.

CHAPTER VI.

OF SOLIDARY OBLIGATIONS.

Section I. General Dispositions.

Art. 896. Solidarity is not presumed; it results from the law or from the will of the parties.

Single Paragraph. Solidarity occurs when in the same obligation there concur more than one creditor, or more than one debtor, each one with right to, or obligated for, the whole debt.

Art. 897. The solidary obligation (*obrigação solidaria*) may be pure and simple for one of the co-creditors or co-debtors, and conditional, or on time, for the other.

Section II. Of Active Solidarity.

Art. 898. Each of the solidary creditors has the right to require of the debtor the performance of the prestation entire.

Art. 899. So long as any of the solidary creditors does not sue (*demandar*) the common debtor, he may pay any one of them.

Art. 900. The payment made to one of the solidary creditors entirely extinguishes the debt.

Single Paragraph. The same effect results from novation, set-off, and remission.

Art. 901. If one of the solidary creditors should de- cease, leaving heirs, each of these only has the right to demand and receive the quota of the credit which corresponds to his hereditary share, unless the obligation is indivisible.

Art. 902. If the prestation is made by payment of losses and damages, the solidarity subsists, and the interest due on account of the delay accrues for the benefit of all the creditors.

Art. 903. The creditor who has remitted the debt or received payment, shall respond to the others for the part to which they are entitled.

Section III. Of Passive Solidarity.

Art. 904. The creditor has the right to demand and receive the common debt in part or in whole from one or any of the debtors.

In the first case, all the other debtors continue solidarily obligated for the balance.

Art. 905. If one of the solidary debtors dies, leaving heirs, each of these shall only be obliged to pay the quota which corresponds with his hereditary share, unless the obligation is indivisible; but all together shall be considered as one solidary debtor in relation to the other debtors.

Art. 906. The partial payment made by one of the debtors, and the remission obtained by him, do not benefit the other debtors, except to the extent (*concorrenzia*) of the amount paid, or remitted (*relevada*).

Art. 907. Any clause, condition, or additional obligation, stipulated between one of the solidary debtors and the creditor, cannot aggravate the position of the others without their consent.

Art. 908. If the prestation becomes impossible through the fault of one of the solidary debtors, the obligation (*encargo*) of paying the equivalent subsists for all; but the party at fault alone responds for the losses and damages.

Art. 909. All the debtors respond for the interest by reason of the delay, although the action has been brought only against one; but the one at fault responds to the others for the increased obligation.

Art. 910. The creditor who brings an action against one of the solidary debtors, is not prevented from suing (*acionar*) the others.

Art. 911. The debtor sued may plead against the creditor the defenses (*excepções*) which are personal to himself and those which are common to all; he cannot benefit, however, by those personal to another co-debtor.

Art. 912. The creditor may renounce the solidarity in favor of one, of some, or of all of the debtors.

Single Paragraph. If the creditor exonerates one or more debtors from the solidarity, he shall only have the right to sue the others upon deducting from the debt the part corresponding to the debtors whose obligation he remitted (Art. 914).

Art. 913. The debtor who satisfies the debt in full, has the right to require each of the co-debtors to contribute his quota, and if any of them is insolvent, his quota shall be equally divided between all of them. The parts of all the co-debtors in the debt are presumed equal.

Art. 914. In the event of contribution (*rateio*) between the co-debtors for the insolvent debtor's share in the obligation (Art. 913), those who have been exonerated from the solidarity by the creditor (Art. 912), shall also contribute.

Art. 915. If the solidary debt concerns (*interessar*) exclusively one of the debtors, he shall respond for all of it to the one who pays (*para com aquella que pagar*).

CHAPTER VII.

OF THE PENAL CLAUSE.

Art. 916. The penal clause may be stipulated together with the obligation or in a subsequent act.

Art. 917. The penal clause may relate to the complete non-performance (*inexecução*) of the obligation, to that of any special clause, or simply to delay.

Art. 918. When the penal clause is stipulated for the case of total non-performance (*inadimplemento*) of the obligation, the latter shall be converted into an alternative for the benefit of the creditor.

Art. 919. When the penal clause is stipulated for the case of delay, or as special security for another specified clause, the creditor shall have the right (*arbitrio*) to require the satisfaction of the penalty stipulated (*comminada*), jointly with the performance (*desempenho*) of the principal obligation.

Art. 920. The value of the penalty (*cominação*) imposed in the penal clause cannot exceed that of the principal obligation.

Art. 921. The debtor incurs legal liability (*incorre de pleno direito na*) under the penal clause, upon the maturity of the period of the obligation, or, if there is none, as soon as he becomes in default (*se constitua em mora*).

Art. 922. The nullity of the obligation involves (*importa*) that of the penal clause.

Art. 923. When the obligation is resolved without the fault of the debtor, the penal clause is resolved.

Art. 924. When the obligation is performed in part, the judge may reduce proportionally the penalty stipulated for the case of default or non-performance.

Art. 925. If the obligation is indivisible, and one of them is in default, all the debtors and their heirs shall be liable for (*incorrerão*) the penalty; but this can be demanded integrally only from the one at fault (*o culpado*). Each of the others responds only for his quota.

Single Paragraph. Those not in default have the regressive action against the one who gave cause for the application of the penalty.

Art. 926. When the obligation is divisible, only the debtor, or the heir of the debtor, who infringed it, incurs in the penalty, and proportionally to his part in the obligation.

Art. 927. In order to require the conventional penalty, it is not necessary for the creditor to plead damage (*prejuizo*).

The debtor cannot relieve (*eximir-se*) himself from complying with it, upon the pretext that it is excessive.

TITLE II.

Of the Effects of Obligations.

CHAPTER I.

GENERAL DISPOSITIONS.

Art. 928. The obligation, if not entirely personal (*personalissima*), is effective (*opéra*) not only between the parties, but between their heirs.

Art. 929. He who has promised the act (*facto*) of a third person shall respond for losses and damages, when the latter does not perform it.

CHAPTER II.

OF PAYMENT.

Section I. Of Who Must Pay.

Art. 930. Anyone interested in the extinction of the obligation may pay it, and if the creditor objects (*se opposuer*), he may use the means necessary for the exoneration of the debtor.

Single Paragraph. A third person who is not interested, has the same right, if he does it (*se o fizer*) in the name and for the account of the debtor.

Art. 931. The third person not interested, who pays the debt in his own name, has the right to be reimbursed for

what he pays; but he is not subrogated in the rights of the creditor.

Single Paragraph. If he pays before the debt is due (*vencida*), he shall only have right to reimbursement at its maturity.

Art. 932. If the debtor objects, for good cause, to the payment of his debt by another, but the latter should, nevertheless, effect the payment, the debtor shall not be obliged to reimburse him, except to the extent that it may benefit him (*senão até á importancia em que lhe elle aproveite*).

Art. 933. The payment which involves the transmission of ownership (*propriedade*), shall only be valid (*valerá*) when made by one who can alienate the object given in payment (*em que elle consistiu*).

Single Paragraph. If, however, a fungible thing is given in payment, it cannot again (*mais*) be reclaimed from the creditor who, in good faith, received it and consumed it, although the person giving it in payment (*o solvente*) did not have the right to alienate it.

Section II. Of Those Who Must Be Paid.

Art. 934. The payment must be made to the creditor or to one who lawfully represents him, under penalty of its being valid only after it is ratified by him, or so far as it may have been to his benefit.

Art. 935. The payment made in good faith to the reputed (*putativo*) creditor is valid, although it is afterwards proven that he was not a creditor.

Art. 936. The payment knowingly made, however, to a creditor incapable of giving acquittance (*quitar*) is not valid, if the debtor does not prove that it effectively operated to his benefit.

Art. 937. The bearer of the acquittance is considered authorized to receive the payment, unless the circumstances contradict the presumption arising therefrom.

Art. 938. If the debtor pays the creditor in spite of having notice (*intimado*) of a levy (*penhora*) made upon the credit, or of the objection (*impugnação oposta*) made to it by third persons, the payment will not be valid against them, and they may constrain the debtor to pay anew (*de novo*), saving to him, however, regressive action (*regresso*) against the creditor.

Section III. Of the Object of the Payment and Its Proof.

Art. 939. The debtor who pays has the right to a regular acquittance (Art. 940), and may retain the payment until it is given to him.

Art. 940. The acquittance shall designate the value and the kind (*especie*) of debt acquitted, the name of the debtor, or whoever paid for him, the time and place of the payment, with the signature of the creditor or of his representative.

Art. 941. If the creditor refuses the acquittance or does not give it in due form (Art. 940), the debtor may cite him for that purpose (*fim*), and shall be acquitted by the sentence which condemns the creditor.

Art. 942. In debts of which the acquittance consists in the return of the title, if this is lost, the debtor may retain the payment and require the declaration of the creditor, which shall render useless (*inutilize*) the lost (*sumido*) title.

Art. 943. When the payment is in periodical quotas, the acquittance for the last one establishes, until proof to the

contrary, the presumption that the preceding ones were paid (*solvidas*).

Art. 944. If the acquittance is for the capital without recital (*reserva*) as to interest, this is presumed paid.

Art. 945. The delivery of the title to the debtor creates (*firma*) the presumption of payment.

§ 1. The acquittance thus obtained (*operada*) shall be without effect, however, if the creditor, within sixty days, proves non-payment.

§ 2. This proof is not permitted when the acquittance is given by public instrument (*escriptura publica*).

Art. 946. The expenses of the payment and acquittance are presumed to be at the charge of the debtor. If, however, the creditor changes his domicile or dies, leaving heirs in different places, the increased expense shall be on account of the creditor.

Art. 947. The payment in money, without determination of the kind (*especie*), shall be in the money current in the place of the performance of the obligation.

§ 1. It is, however, lawful for the parties to stipulate that it may be effected in a certain and determined kind of money, national or foreign.

§ 2. The debtor, in the case of the preceding paragraph, may, however, choose between payment in the kind designated in the title and its equivalent in money current in the place of the prestation, at the exchange of the day of maturity. If there is no quotation on that day, that immediately preceding shall apply.

§ 3. When the debtor is in default and the rate (*agio*) has varied between the date of maturity and that of pay-

ment, the creditor may choose one of them, if no fixed exchange is stipulated.

§ 4. If the quotation varied on the same day, the average of the market on that date shall be taken as a basis.

Art. 948. In indemnizations for an unlawful act (*facto*) the value most favorable to the injured person (*lesado*) shall prevail.

Art. 949. If the payment is to be made by measure, or weight, it is understood, in the silence of the parties, that they accept those of the place of performance.

Section IV. Of the Place of Payment.

Art. 950. The payment shall be effected in the domicile of the debtor, unless the parties otherwise agree, or the circumstances, the nature of the obligation or the law otherwise provide (*dispuzerem*).

Single Paragraph. If two or more places are designated, the creditor has the choice between them.

Art. 951. If the payment consists in the tradition of an immovable, or in prestations relative to an immovable, it shall be made at the place where this is.

Section V. Of the Time of Payment.

Art. 952. Saving special disposition of this Code, and if no time (*epoca*) has been fixed for payment, the creditor may require it immediately.

Art. 953. Conditional obligations are performed on the date of the fulfillment (*implemento*) of the condition, the creditor being bound to prove that the debtor had knowledge of it.

Art. 954. The creditor shall have the right to collect the

debt before the expiration of the time stipulated in the contract or provided in this Code:

I. If, upon execution against the debtor, the concurrence of creditors (*concurso creditorio*) is opened.

II. If property, mortgaged, pledged or given in anti-chresis, is levied upon in execution by another creditor.

III. If the guaranties of the debt, *fidejussory* or real, cease or become insufficient, and the debtor, after being notified, refuses to make them good (*reforçal-as*).

Single Paragraph. In the cases covered by this Article, if the debt is one of passive solidarity (Arts. 904 to 915), it shall not be considered as matured with respect to the other solvent debtors.

Section VI. Of Default (Mora).

Art. 955. The debtor who does not effect the payment, and the creditor who does not wish to accept it in the time, place and form agreed (Art. 1058), are considered in default (*mora*).

Art. 956. The debtor responds for the damages which his default may cause (Art. 1058).

Single Paragraph. If the prestation, by reason of the default, becomes useless to the creditor, he may refuse to accept it (*engeital-a*) and require satisfaction of the losses and damages.

Art. 957. The debtor in default (*em mora*) responds for the impossibility of the prestation, although such impossibility results from fortuitous event or vis major, if the same occurred during the delay (*atrazo*); unless it is proved that he was without fault, or that the damage would have occurred (*sobreviria*) although the obligation had been opportunely performed (Art. 1058).

Art. 958. The default of the creditor relieves the debtor who acted without deceit (*dolo*) from responsibility for the preservation of the thing, and obliges the creditor to reimburse the expenses incurred in preserving it, and to receive it at its highest value (*estimação*), if its value fluctuated between the time of the contract and that of payment.

Art. 959. The default is purged (*purga-se a mora*):

I. On the part of the debtor, by his offering the prestation, plus the amount of the damages (*prejuizos*) accruing up to the day of the offer.

II. On the part of the creditor, by his offering to receive the payment and submitting to the effects of the default up to the same date.

III. On the part of both, by the one who deems himself prejudiced by it, renouncing the rights which accrued to him thereby.

Art. 690. The non-performance (*inadimplemento*) of the obligation, positive and liquid, within its term, constitutes the debtor in default, by force of law.

If no period has been fixed, the default begins from the interpellation, notification, or protest.

Art. 961. In negative obligations, the debtor is constituted in default from the day on which he does the act from which he should abstain.

Art. 962. In obligations arising from crime (*delicto*), the debtor is considered in default from the time that he perpetrated it.

Art. 963. If there is no act (*facto*) or omission imputable to the debtor, he does not incur in default (*em mora*).

Section VII. Of Undue Payment.

Art. 964. Every one who receives that which is not due to him is obliged to restore it.

The same obligation rests upon (*incumbe ao*) him who receives a conditional debt before the condition is fulfilled.

Art. 965. He who voluntarily paid what he did not owe (*o indevido*), must prove that he did it through error.

Art. 966. With respect to the fruits, accessions, improvements and deteriorations accruing to the thing given in undue payment, the provisions of Arts. 510 to 519 apply.

Art. 967. If he who unduly received an immovable has alienated it, he must assist the proprietor in the rectification of the register, in the terms of Art. 860.

Art. 968. If he who unduly received an immovable has alienated it in good faith, by onerous title, he responds only for the price received; but, if he acted in bad faith, besides the value of the immovable, he responds for losses and damages.

Single Paragraph. If the immovable was alienated by gratuitous title, or if, being alienated by onerous title, the third person acquiring it acted in bad faith, the person who paid through error has the right of recovery (*reivindicacão*).

Art. 969. He is exempt from restoring an undue payment who, upon receiving in on account of a true debt, cancelled (*inutilisou*) the title, let the action prescribe or released (*abriu mão*) the guaranties which secured his right; but he who paid has a regressive action against the true debtor and his surety.

Art. 970. That which was paid to settle (*solver*) a prescribed debt or to perform a natural obligation, cannot be recovered (*repetir*).

Art. 971. He who gave something in order to attain an illicit, or immoral end, or one prohibited by law, has no right of recovery.

CHAPTER III.

OF PAYMENT BY CONSIGNATION.

Art. 972. The judicial deposit of the thing due, in legal form, and in cases where the law permits it, is considered payment and extinguishes the debt.

Art. 973. Consignation may be made (*tem logar*):

I. If the creditor, without just cause, refuses to receive the payment or to give acquittance in due form.

II. If the creditor is not present, or does not order the thing to be received in the proper (*devidas*) place, time and conditions.

III. If the creditor is unknown, has been declared an absentee, or resides in a place uncertain, or of dangerous and difficult access.

IV. If doubt arises in regard to who should legitimately receive the object of the payment.

V. If a lawsuit is pending about the payment.

VI. If there is a concurrence of preference opened against the creditor, or if he is incapable of receiving the payment.

Art. 974. In order that the consignation may have the force of payment, it is necessary (*mistér*) that all the requisites, with relation to the persons, the object, the manner and time, without which the payment is not valid, must concur.

Art. 975. In the cases of Art. 973, nos. I, II and III, the creditor shall be cited to come or send some one to receive (*mandar receber*), and in the case of the same Article, no. VII, to prove his right.

Art. 976. The deposit shall be required in the place of payment, and, unless it is adjudged inadmissible (*improcedente*), the interest on the debt and the risks shall cease for the depositor, as soon as it is effected.

Art. 977. So long as (*emquanto*) the creditor does not declare that he accepts the deposit, or does not object to it (*impugnar*), the debtor may withdraw it (*requerer o levantamento*), upon paying the expenses incurred, and the obligation subsists for all legal consequences.

Art. 978. If the deposit is adjudged admissible (*procedente*) the debtor cannot withdraw it, although the creditor consents, without the consent of the other debtors and sureties.

Art. 979. The creditor who, after answering the suit (*lide*) or accepting the deposit, acquiesces in the withdrawal (*levantamento*), shall lose the preference and guaranty which he had with respect to the thing consigned, and the co-debtors and sureties who did not consent are at once discharged (*desobrigados*).

Art. 980. If the thing due is a certain object (*corpo*) which is to be delivered in the same place where it is, the debtor may cite the creditor to come or send to receive it, under penalty of its being deposited.

Art. 981. If the choice of an undetermined thing belongs to the creditor, he shall be cited for this purpose, under penalty (*cominação*) of losing the right and of the deposit of the thing which the debtor chooses. Upon the choice being made by the debtor, the procedure of the preceding Article shall be observed.

Art. 982. The expenses of the deposit, when it is adjudged admissible (*procedente*), shall be at the account of

the creditor, and in the contrary case, at the account of the debtor.

Art. 983. The debtor of a litigious obligation shall be exonerated by making consignation, but if he pays either of the claimant creditors, having knowledge of the suit (*litigio*), he shall assume the risk of payment.

Art. 984. If the debt matures pending a suit (*litigio*) between creditors who are attempting mutually to exclude each other, either of them may require the consignation.

CHAPTER VI.

OF PAYMENT WITH SUBROGATION.

Art. 985. Subrogation occurs, by operation of law (*de pleno direito*), in favor:

I. Of the creditor who pays the debt of the common debtor to the creditor who was entitled to the right of preference.

II. Of the grantee (*adquirente*) of the mortgaged immovable, who pays the mortgage creditor.

III. Of the interested third person, who pays the debt for which he was or might be obligated, in whole or in part.

Art. 986. Subrogation is conventional:

I. When the creditor receives payment from a third person and expressly transfers to him all his rights.

II. When a third person lends to the debtor the amount necessary to settle the debt under the express condition that the lender (*mutuante*) shall be subrogated in the rights of the satisfied creditor.

Art. 987. In the case (*hypothese*) of the preceding Article, no. I, the provisions in regard to the cession of credits (Arts. 1065 to 1078) shall apply (*vigorará*).

Art. 988. Subrogation transfers to the new creditor all the rights, actions, liens (*privilegios*) and guaranties of the original one (*primitivo*), in relation to the debt, against the principal debtor and his sureties.

Art. 989. In the legal subrogation the party subrogated cannot exercise the rights and actions of the creditor, except to the extent of the sum which he has disbursed in order to discharge (*desobrigar*) the debtor.

Art. 990. The original creditor, reimbursed only in part, shall have preference over the subrogated one, in the collection of the remaining debt, if the property of the debtor is not sufficient to settle (*saldar*) entirely what he owes to them both (*a um e outro dever*).

CHAPTER V.

OF THE IMPUTATION OF PAYMENT.

Art. 991. The person obligated for two or more debts of the same nature to one sole creditor, has the right to indicate which of them he offers to pay, if all are liquid and due (*vencidos*).

Without consent of the creditor, application (*imputação*) shall not be made to the payment of a debt not liquid or not due.

Art. 992. If the debtor has not declared to which of the liquid and matured debts he wishes to impute the payment, he shall not have the right, if he accepts the acquittance of one of them, to object to (*reclamar contra*) the imputation made by the creditor, except by proving that he committed violence or deceit (*dolo*).

Art. 993. If the capital and interest are both due, the payment shall be imputed first to the interest matured, and afterwards to the capital, saving stipulation to the con-

trary, or if the creditor gives the acquittance on account of the capital.

Art. 994. If the debtor does not make the indication of Art. 991, and if the acquittance is silent (*omissa*) in regard to the imputation, it shall be made in the first place as to debts liquid and due.

If the debts are all liquid and due at the same time, the imputation shall be made to the most onerous.

CHAPTER VI.

OF DATION IN PAYMENT (DAÇÃO).

Art. 995. The creditor may consent to receive a thing which is not money, in substitution of the prestation which is due him.

Art. 996. Where the price of the thing given in payment is determined, the relations between the parties shall be governed by the rules (*normas*) of the contract of purchase and sale (*compra e venda*).

Art. 997. If the thing given in payment is a title of credit, the transfer amounts to an assignment (*importará em cessão*).

Art. 998. If the creditor is evicted from the thing received in payment, the original obligation shall be re-established, and the acquittance given is without effect.

CHAPTER VII.

OF NOVATION (NOVAÇÃO).

Art. 999. Novation occurs (*dá-se*):

I. When the debtor contracts with the creditor a new debt, in order to extinguish and substitute the previous one.

II. When a new debtor succeeds the old one, the latter being acquitted (*quite com*) by the creditor.

III. When, by virtue of a new obligation, another creditor is substituted for the old, the debtor being acquitted (*quite com*) by the latter.

Art. 1000. If there is no intention to novate (*animo de novar*), the second obligation simply confirms the first.

Art. 1001. Novation by substitution of debtor may be effected without the consent of the latter.

Art. 1002. If the new debtor is insolvent, the creditor, who accepted him, has no regressive action against the first, unless the latter obtained the substitution in bad faith.

Art. 1003. Novation extinguishes the accessories and guaranties of the debt, provided there is no stipulation to the contrary.

Art. 1004. It shall not, however, avail the creditor to make a reservation (*resalvar*) in the mortgage, antichresis or pledge, if the property given in guaranty belongs to a third person who was not a party to the novation.

Art. 1005. When the novation is effected between the creditor and one of the solidary debtors, the preferences and guaranties of the new credits subsists only with respect to (*sobre*) the property of the one who contracted the new obligation.

Single Paragraph. The other solidary debtors are by that act (*facto*) exonerated.

Art. 1006. The novation made without his consent, with the principal debtor, exonerates the surety.

Art. 1007. Void or extinct obligations cannot be validated by novation.

Art. 1008. The obligation which is simply voidable may be confirmed by the novation.

CHAPTER VIII.

Of Compensation (COMPENSAÇÃO).

Art. 1009. If two persons are at the same time creditor and debtor one of the other, the two obligations are extinguished, so far as they compensate (set-off) each other (*se compensarem*).

Art. 1010. Compensation (set-off) is effected between liquid and matured debts, and with fungible things.

Art. 1011. Although the fungible things which are the object of the two prestations, are of the same kind, they will not compensate each other if it appear that they differ in quality, when this is specified in the contract.

Art. 1012. Prestations of uncertain things cannot be compensated (*não são compensáveis*), when the choice belongs to the two creditors, or to one of them as debtor of one of the obligations and creditor of the other.

Art. 1013. The debtor can only compensate with the creditor what the latter owes him; but the surety may compensate his debt with that of his creditor to the principal (*ao afiançado*).

Art. 1014. Days of grace (*os prazos de favor*), although consecrated by general usage, do not prevent the compensation.

Art. 1015. The difference of cause of the debts does not prevent compensation, except:

I. If one arises from wrongful dispossession (*esbulho*), theft or robbery.

II. If one originates from commodatum, deposit, or aliments.

III. If one is of a thing not susceptible of levy (*penhora*).

Art. 1016. Compensation cannot be effected, if it was previously renounced by one of the debtors.

Art. 1017. The fiscal debts of the Union, of the States and of the Municipios also cannot be the object of compensation, except in the cases of set-off (*encontro*) between the administration and the debtor, authorized by law and the Treasury Regulations.

Art. 1018. There shall be no compensation when the creditor and the debtor by mutual consent exclude it.

Art. 1019. Where a person obligates himself for a third person, he cannot compensate that debt with that which the creditor of such third person owes him.

Art. 1020. The solidary debtor can only compensate with the creditor what the latter owes to his co-obligor, so far as the equivalent of the latter's part in the common debt.

Art. 1021. The debtor who, being notified, makes no objection to the assignment (*cessão*) which the creditor makes of his rights to third persons, cannot oppose to the assignee (*cessionario*) the compensation which, before the assignment, he could have opposed to the assignor (*cedente*). If, however, he was not notified of the assignment, he may oppose to the assignee the compensation of credit which he had before against the assignor.

Art. 1022. When the two debts are not payable in the same place, they cannot be compensated without deduction of the necessary expenses of the operation.

Art. 1023. Where the same person is obligated for several compensable debts, the rules established in regard to imputation of payment (Arts. 991 to 994) shall be observed in compensating them.

Art. 1024. Compensation is not admitted to the prejudice of the rights of third persons. The debtor who becomes the creditor of his creditor, cannot, after the credit of the latter has been seized in levy (*penhorado*), oppose to the execution creditor (*exequente*) the compensation which he would have had against the creditor himself.

CHAPTER IX.

OF COMPROMISE (TRANSAÇÃO).

Art. 1025. It is lawful for the interested parties to prevent or to terminate a law suit (*litigio*) by means of mutual concessions.

Art. 1026. If any of the clauses of the transaction (*transacção*) is void, it shall be void.

Single Paragraph. When the compromise (*transacção*) relates to several contested rights, and it is not valid as to one, it is, nevertheless, valid as to the others.

Art. 1027. Transaction is strictly interpreted. Rights are not transmitted by it; they are hardly (*apenas*) declared or acknowledged.

Art. 1028. If the transaction relates to rights contested in a suit (*em juizo*), it shall be effected:

I. By entry of record (*termo nos autos*), signed by the compromising parties (*transigentes*) and approved (*homologado*) by the judge.

II. By notarial act (*escriptura publica*) in obligations in which the law requires such act, or by private instrument in those cases in which this is permitted.

Art. 1029. If there is as yet no suit (*litigio*), the transaction shall be effected by that one of the modes indicated in the preceding Article, no. II, which is applicable to the case.

Art. 1030. The transaction produces between the parties the effect of *res adjudicata* (*coisa julgada*), and is only rescinded for deceit (*dolo*), violence, or essential error in respect to the person or thing in controversy (*controversa*).

Art. 1031. The transaction benefits, or prejudices, only those who are parties to it, although it may have reference to (*diga respeito a*) an indivisible thing.

§ 1. If it is concluded between the creditor and the principal debtor, the surety is discharged.

§ 2. If concluded between one of the solidary creditors and the debtor, the obligation of the latter with respect to the other creditors is extinguished.

§ 3. If between one of the solidary debtors and his creditor, the debt is extinguished with respect to the co-debtors.

Art. 1032. In the case of eviction of the thing renounced by one of the parties to the compromise (*transigentes*), or transferred by him to another party, the obligation extinguished by the transaction is not revived; but the party evicted (*o evicto*) has the right to claim losses and damages.

Single Paragraph. If one of the parties (*transigentes*), after the transaction, acquires a new right to the thing renounced or transferred, the transaction made shall not prevent him from exercising it.

Art. 1033. The transaction concerning obligations resulting from crime (*delicto*) does not extinguish (*perime*) the penal action of public justice.

Art. 1034. The conventional penalty is admissible in the transaction.

Art. 1035. Only in respect to patrimonial right of a private character, is transaction permitted.

Art. 1036. The transaction with respect to a lawsuit (*litigio*) decided by final judgment is void, if some of the parties (*transigentes*) had no knowledge of it, or when, by a title subsequently discovered, it appears that none (*nenhum*) of them had any right to the object of the transaction.

CHAPTER X.

OF ARBITRATION (*COMPROMISSO*).

Art. 1037. Persons capable of contracting may, at any time, by means of a written agreement (*compromisso*) agree (*louvar-se*) upon arbiters (*arbitros*), who may settle judicial or extrajudicial controversies (*pendencias*) for them.

Art. 1038. Arbitration (*compromisso*) is judicial or extrajudicial.

The former may be effected by entry of record (*termo nos autos*), before the judge or tribunal where the suit is pending; the second, by public or private act (*escriptura*), signed by the parties and two witnesses.

Art. 1039. The compromise agreement, besides the object of the suit submitted to it, shall contain the names, surnames and domicile of the arbiters, as well as those of the substitutes appointed to take their place in the event of failure or impediment.

Art. 1040. The compromise agreement may also declare:

I. The period within which the arbitral decision must be given.

II. The condition as to its being executed with or without recourse to the superior tribunal.

III. The penalty, in favor of the other party, to which the party is obligated who takes recourse (*recorrer*) against the decision, notwithstanding the clause "without re-

course." This penalty shall not exceed the third of the value in suit (*pleito*).

IV. The authorization given to the arbiters to decide (*julgar*) according to equity, outside of the rules and forms of law (*direito*).

V. The authorization given to them to appoint a third arbiter, in case of disagreement (*caso divirjam*), if the parties have not appointed him.

VI. The fees of the arbiters and the proportion in which they shall be paid.

Art. 1041. The arbiters are judges of fact and of law, and their judgment is not subject to appeal (*alzada*) or recourse, unless the parties have otherwise agreed.

Art. 1042. If the parties have not appointed the third arbiter, nor authorized his appointment by the others (Art. 1040, no. V), the disagreement between the two arbiters shall extinguish the compromise.

Art. 1043. Any one who has the confidence of the parties may be arbiter, if he is not forbidden by law.

Art. 1044. The arbitral suit (*juizo arbitral*) being instituted, judicially or extrajudicially, the suit shall run its course (*termos*), according to the process established in the laws of procedure.

Art. 1045. The arbitral sentence shall only be executed after being judicially approved (*homologado*), unless it is rendered by a judge of first or second instance, as an arbiter appointed by the parties.

Art. 1046. Although the compromise contains the clause "without recourse" and a conventional penalty against the party who does not submit to it (*insubmissa*), the latter shall have the right of recourse to the tribunal, either in case of the nullity or extinction of the compromise, or in

case that the arbiter has exceeded his powers.

Single Paragraph. Before such recourse, which shall be governed by the law of procedure, shall be taken, the amount of the penalty must be deposited, or a sufficient (*idonea*) bond be given for its payment.

Art. 1047. The sustaining (*provimento*) of the recourse imports the annulment of the conventional penalty.

Art. 1048. The provisions in respect to compromise, (Arts. 1025 to 1036), shall be applied, so far as possible, to arbitration.

CHAPTER XI.

OF CONFUSION (MERGER).

Art. 1049. The obligation is extinguished, when the characters (*qualidades*) of creditor and debtor are merged (*se confundam*) in the same person.

Art. 1050. The confusion (*merger*) may take place with respect to the whole debt, or only a part of it.

Art. 1051. If the confusion takes place in the person of a solidary creditor or debtor it only extinguishes the obligation to the extent of the equivalence (*atá á concorrência*) of the respective parts of the credit or of the debt, the solidarity subsisting with respect to the remainder (*ao mais*).

Art. 1052. When the confusion ceases, the previous obligation, with all its accessories, is at once re-established.

CHAPTER XII.

OF THE REMISSION OF DEBTS.

Art. 1053. The voluntary delivery of the title of the debt, when evidenced by private instrument (*escrito*), proves the exoneration of the debtor and his co-obligors, if

the creditor is capable of alienating, and the debtor capable of acquiring.

Art. 1054. The delivery of the object pledged proves the renouncement by the creditor of the real guaranty, but not the extinction of the debt.

Art. 1055. The remission granted to one of the co-debtors extinguishes the debt in the part corresponding to him; so that, although the creditor reserves the solidarity against the others, he cannot collect the debt without deduction of the part remitted.

CHAPTER XIII.

OF THE CONSEQUENCES OF THE NON-PERFORMANCE OF OBLIGATIONS.

Art. 1056. If the debtor does not perform the obligation, or fails to perform it in due manner and time, he responds for losses and damages.

Art. 1057. In unilateral contracts, the contracting party whom the contract favors, responds for simple fault (*culpa*), and the one whom it does not favor, only for deceit (*dolo*).

In bilateral contracts each of the parties responds for fault (*culpa*).

Art. 1058. The debtor does not respond for damages (*prejuizos*) resulting from accident (*caso fortuito*) or *vis major* (*força maior*), if he has not expressly assumed responsibility therefor, except in the cases of Arts. 955, 956 and 957.

Single Paragraph. Accident (*caso fortuito*), or *vis major* (*força maior*) occurs from a necessary act (*verificação no facto necessario*), the effects of which it was not possible to avert or impede (*evitar ou impedir*).

CHAPTER XIV.

OF LOSSES AND DAMAGES (PERDAS E DAMNOS).

Art. 1059. Saving the exceptions expressly indicated (*previstas*) in this Code, the losses and damages (*perdas e danos*) due to the creditor include, besides what he effectively lost, what he reasonably failed to gain (*deixou de lucrar*).

Single Paragraph. The debtor, however, who did not pay in due time and form, only responds for the gains (*lucros*) which were or could be foreseen at the date of the obligation.

Art. 1060. Although the non-performance results from the deceit (*dolo*) of the debtor, the losses and damages only include the damages (*prejuizos*) caused (*efectivos*) and the gains lost (*cessantes*) by the direct and immediate effect of it.

Art. 1061. The losses and damages in obligations for payment in money, consist of the interest for delay (*da mora*) and costs, without prejudice to the conventional penalty.

CHAPTER XV.

OF LEGAL INTEREST (JUROS).

Art. 1062. The rate (*taxa*) of moratory interest, when it is not agreed upon (Art. 1262), shall be six per cent per annum.

Art. 1063. Interest due by force of law, or when the parties agreed for it without stipulated rate, shall also be six per cent per annum.

Art. 1064. Although no damage (*prejuizo*) is alleged, the debtor is obliged for the interest for delay, which shall

be counted not only upon debts in money, but also upon prestations of another nature, from the time (*desde que*) that their pecuniary value is fixed by judicial sentence, arbitrament, or agreement between the parties.

TITLE III.

Of the Assignment of Credit (*Cessao*).

Art. 1065. The creditor may assign (*ceder*) his credit, if the nature of the obligation, the law, or the agreement with the debtor does not forbid (*não se oppuzer*).

Art. 1066. Saving provision to the contrary, the assignment of a credit embraces all its accessories.

Art. 1067. The assignment of a credit is not valid as to third persons, if it is not executed (*celebrar*) by a public instrument, or by private instrument executed with (*revestir*) the solemnities of Art. 135 (Art. 1068).

Single Paragraph. The assignee (*cessionario*) of a hypothecary credit has the right, as being subrogated (*como o subrogado*), to have the assignment inscribed on the margin of the principal inscription.

Art. 1068. The provisions of the preceding Article, first part, do not apply to the transfer of credits by operation of law or sentence.

Art. 1069. The assignment of credit is not valid with relation to the debtor, except when he is notified of it; but the debtor is considered (*se tem por*) notified, who, in a public or private instrument (*escrito*), declares himself as having knowledge (*ciente*) of the assignment made.

Art. 1070. If there are (*occorrendo*) several assignments of the same credit, the one completed by the tradition of the title of the credit assigned, prevails.

Art. 1071. The debtor is discharged who, before having knowledge of the assignment, pays the original creditor who, in the case of more than one assignment notified to him, pays the assignee who presents to him, together with the instrument (*titulo*) of assignment, the evidence (*titulo*) of the obligation.

Art. 1072. The debtor may oppose to the assignee as well as to the assignor the defences (*excepções*) which he had at the time when he received knowledge of the assignment; but he cannot oppose to the assignee in good faith the simulation of the assignor (*cedente*).

Art. 1073. In assignment by onerous title, the assignor, although he does not assume responsibility (*se não responsabilize*), is responsible to the assignee for the existence of the credit at the time he assigned it to him. He has the same responsibility in assignments by gratuitous title, if he acted in bad faith.

Art. 1074. Saving stipulation to the contrary, the assignor does not respond for the solvency of the debtor.

Art. 1075. The assignor, who is responsible to the assignee for the solvency of the debtor, does not respond for more than he received, with interest; but he must reimburse him for the expenses of the assignment and those which the assignee may have made in the collection.

Art. 1076. When the transfer of the credit is effected by force of law, the original creditor does not respond for the reality of the debt nor for the solvency of the debtor.

Art. 1077. The credit, when once levied upon (*penhorado*), cannot be again transferred by the creditor having knowledge of the levy; but the debtor who pays it without having notification of it, is exonerated, the rights of third persons subsisting only against the creditor.

Art.1078. The provisions of this Title apply to the assignment of other rights for which there may be no special mode of transfer.

TITLE IV.

Of Contracts.

CHAPTER I.

GENERAL DISPOSITIONS.

Art.1079. The manifestation of the will in contracts may be tacit, when the law does not require that it be express.

Art.1080. The offer (*proposta*) of the contract obligates the offerer (*proponente*), if the contrary does not result from the terms of it, or from the nature of the business, or from the circumstances of the case.

Art.1081. The offer ceases to be obligatory:

I. If, being made without time limit (*prazo*) to a person present, it was not immediately accepted.

A person is considered also as present who contracts by means of the telephone.

II. If, being made without time limit (*prazo*) to a person absent, sufficient time has elapsed (*decorrido*) for the reply to come (*chegar*) to the knowledge of the offerer.

III. If, made to a person absent, he has not forwarded (*expedita*) the reply within the time given.

IV. If, before reply, or simultaneously with it, the retraction of the proponent comes to the knowledge of the other party.

Art.1082. If the acceptance, by an unforeseen circumstance, comes late to the knowledge of the proponent, he

shall communicate it immediately to the acceptor, under penalty of responding for losses and damages.

Art. 1083. The acceptance out of time (*fóra do prazo*), with additions, restrictions, or modifications, amounts to (*importará*) a new offer.

Art. 1084. If the business (*negocio*) is one of those in which an express acceptance is not customary, or the proponent has dispensed with it, the contract is deemed closed, when the refusal (*recusa*) does not arrive in time.

Art. 1085. The acceptance is considered as non-existent, if before it or with it the retraction of the acceptor reaches the proponent.

Art. 1086. Contracts by epistolary or telegraphic correspondence, become perfected from the sending of (*é expedida*) the acceptance, except:

I. In the case of the preceding **Article**.

II. If the proponent has agreed (*comprometido*) to await a reply.

III. If it does not arrive within the time agreed.

Art. 1087. The contract is reputed as made (*celebrado*) in the place in which it was proposed.

Art. 1088. When a public instrument is required as proof of the contract, either of the parties may retract (*arrepender-se*) before signing it, reimbursing to the other the losses and damages resulting from the retraction, without prejudice to the provisions of Arts. 1095 to 1097.

Art. 1089. The inheritance (*herança*) of a living person can not be the object of a contract.

Art. 1090. Beneficial contracts shall be interpreted strictly.

Art. 1091. The impossibility of the prestation does not invalidate the contract, if it is relative, or ceases before the condition is fulfilled.

CHAPTER II.

OF BILATERAL CONTRACTS.

Art. 1092. In bilateral contracts, neither of the contracting parties, before complying with his obligation, can require the performance (*implemento*) of that of the other.

If, after the contract is concluded, either of the contracting parties should suffer (*sobrevier a*) a diminution of his estate (*patrimonio*), capable of compromising or rendering doubtful the prestation for which he obligated himself, the party whose duty is it to make the prestation in the first place, may refuse it until the other satisfies what he is bound to do, or gives a sufficient guaranty to satisfy it.

Single Paragraph. The party injured by the non-performance may require the rescission of the contract with losses and damages.

Art. 1093. The retraction (*distracto*) is made in the same form as the contract. But the acquittance is valid, whatever its form may be.

CHAPTER III.

OF EARNEST (*ARRHAS*).

Art. 1094. The sign, or earnest (*arrhas*) given by one of the contracting parties confirms (*firma*) the presumption of final accord, and renders the contract obligatory.

Art. 1095. The parties may, however, stipulate the right to retract notwithstanding the earnest given. In such case, if the retractor (*o arrependido*) is the one who gave it, he shall lose it to the benefit of the other; if the one who receives it, he shall restore it two-fold (*em dobro*).

Art. 1096. Saving stipulation to the contrary, the earnest money (*arrhas em dinheiro*) is considered the beginning of payment. Except in that case (*fóra esse caso*), it must be restored, when the contract is concluded or is undone (*desfeito*).

Art. 1097. If he who gave the earnest causes the prestation to become impossible, or the contract to be rescinded, he shall lose it to the benefit of the other.

CHAPTER IV.

OF STIPULATIONS IN FAVOR OF THIRD PERSONS.

Art. 1098. He who stipulates in favor of a third person may require the performance of the obligation.

Single Paragraph. The third person in whose favor the obligation was stipulated, is also permitted to require it, he being, however, subject to the conditions and terms (*normas*) of the contract, if he consented to it, and the maker of the stipulation (*estipulante*) has not changed (*innovar*) it, in the terms of Art. 1100.

Art. 1099. If the third person, in whose favor the contract was made, was given the right to demand its performance, the maker of the stipulation cannot exonerate the debtor.

Art. 1100. The maker of the stipulation (*estipulante*) may reserve to himself the right to substitute the third person designated in the contract, independently of his consent and of that of the other contracting party (Art. 1098, Single Paragraph).

Single Paragraph. Such substitution may be made by act *inter vivos* or by disposition of last will.

CHAPTER V.

OF REDHIBITORY VICES.

Art. 1101. The thing received by virtue of a commutative contract may be rejected for occult vices or defects, which render it inappropriate for the use to which it is intended, or diminish its value.

Single Paragraph. The provisions of this Article are applicable to donations encumbered with a charge (*encargo*).

Art. 1102. Saving express clause in the contract, ignorance of such vices on the part of the alienor does not exempt him from responsibility (Art. 1103).

Art. 1103. If the alienor knew the vice or defect, he shall restore what he received together with losses and damages; if he did not know of it, he shall only restore the value received, plus the expenses of the contract.

Art. 1104. The responsibility of the alienor subsists, although the thing perishes in the power of the alienee, if it perished by reason of an occult vice already existing at the time of tradition.

Art. 1105. Instead of rejecting the thing, and rescinding (*redhibiendo*) the contract (Art. 1101), the acquirer may demand an abatement of the price (Art. 178, § 2 and § 3, no. IV).

Art. 1106. If the thing was sold at public sale (*em hasta publica*), the redhibitory action, or that for abatement of price does not lie (*cabe*).

CHAPTER VI.

OF EVICTION.

Art. 1107. In onerous contracts, by which ownership (*dominio*), possession or use is transferred, the alienor shall be obligated to secure (*resguardar*) the acquirer against the risks of eviction, provided that this responsibility was not expressly excluded.

Single Paragraph. The parties may increase (*reforçar*) or diminish this guaranty.

Art. 1108. Notwithstanding the clause which excludes the guaranty against eviction (Art. 1107), if this takes place (*se der*), the party evicted (*o evicto*) has the right to recover the price which he paid for the thing evicted, if he did not know of the risk of eviction, or, if informed of it, did not assume it.

Art. 1109. Saving stipulation to the contrary, the party evicted has the right, besides the integral restitution of the price, or of the amounts, which he paid:

I. To indemnization for the fruits which he has been obliged to restore.

II. To indemnization for the expenses of the contracts and of the damages (*prejuizos*) which directly resulted from the eviction.

III. To the judicial costs.

Art. 1110. This obligation subsists for the alienor although the thing alienated may be deteriorated, except in case of the deceit (*dolo*) of the acquirer.

Art. 1111. If the acquirer has obtained advantages from the deterioration, and has not been condemned to indemnify them, the value of the advantages shall be deducted from the amount which the alienor must give him.

Art. 1112. The necessary or useful improvements, not reimbursed (*abonadas*) to the party suffering eviction, shall be paid by the alienor.

Art. 1113. If the improvements for which the party suffering eviction has been reimbursed, were made by the alienor, their value shall be taken into account in making the restitution due.

Art. 1114. If the eviction is partial, but considerable, the evicted party may elect between the rescission of the contract and the restitution of the part of the price corresponding to the abatement (*desfalque*) suffered.

Art. 1115. The amount of the abatement, in the case (*hypothese*) of the preceding Article, shall be calculated in proportion to the value of the thing at the time it happened (*evenceu*).

Art. 1116. In order to exercise the right which results to him from the eviction, the acquirer shall notify the alienor of the suit, in the time and manner which the laws of procedure may determine.

Art. 1117. The acquirer cannot sue on account of eviction:

I. If he was deprived of the thing, not by judicial means, but by accident, *vis major*, robbery or theft.

II. If he knew that the thing belonged to another or was litigious.

CHAPTER VII.

OF ALEATORY CONTRACTS.

Art. 1118. If the contract is aleatory, by reason of relating (*por dizer a respeito a*) to future things, the risk of the coming into existence of which is assumed by the acquirer, the alienor is entitled to the entire price, if there has been

no fault (*culpa*) on his part, although absolutely nothing of them comes into existence.

Art. 1119. If it is aleatory by reason of its object being future things, and the acquirer takes upon himself the risk of their coming into existence in any quantity, the alienor shall also have the right to the whole price, provided that no fault (*culpa*) on his part has concurred, although the thing came into existence in a quantity inferior to that which was expected.

Single Paragraph. But, if nothing of the thing came into existence, there will be no alienation, and the acquirer shall restore the price received.

Art. 1120. If it is aleatory, because referring to things existing, but subject to risk assumed by the acquirer, the alienor shall likewise be entitled to the whole price, provided that the thing did not (*já não*) exist in whole or in part, on the day of the contract.

Art. 1121. The aleatory alienation of the preceding Article may be annulled as fraudulent (*dolosa*) by the injured party, if he proves that the other contracting party was not ignorant of the consummation of the risk, to which in the contract the thing was considered to be exposed.

TITLE V.

Of the Several Kinds of Contracts.

CHAPTER I.

OF PURCHASE AND SALE (*COMPRA E VENDA*).

Section I. General Dispositions.

Art. 1122. By the contract of purchase and sale (*compra e venda*), one of the contracting parties obligates himself to transfer the ownership (*dominio*) of a certain thing, and the other, to pay him a certain price in money.

Art. 1123. The fixation of the price may be left to the arbitrament of a third person, whom the contracting parties at once (*logo*) designate or promise to designate. If the third person does not accept the duty (*incumbencia*), the contract will remain without effect, unless the parties agree to designate another person.

Art. 1124. The fixation of the price may also be left at the rate (*tasa*) of the market or exchange (*bolsa*), of a certain and determined day and place.

Art. 1125. The contract of purchase and sale is void, when the fixing (*taxação*) of the price is left to the exclusive determination (*arbitrio*) of one of the parties.

Art. 1126. The purchase and sale, when unconditional (*pura*), is considered as obligatory and perfected from the time that the parties agree upon the object and price.

Art. 1127. Until the moment of tradition, the risks of the thing are to the account of the vendor, and those of the price to the account of the buyer.

§ 1. However, accidents (*os casos fortuitos*) occurring in the act of counting, marking, or setting apart (*assignalar*) things, which commonly are received by counting, weighing, measuring or setting apart, and which have already been placed at the disposition of the buyer, are to the account of the latter.

§ 2. The risks of the aforesaid things are also to the account of the buyer, if he is in default (*mora*) in receiving them, when placed at his disposition at the time and place and in the manner agreed upon (*ajustados*).

Art. 1128. If the thing is forwarded (*expedida*) to a different place, by order of the buyer, the risks will be to his account, after they are delivered to the person who is to

transport them, unless the vendor departed from the instructions given him (*delle*) by the buyer.

Art. 1129. Saving clause to the contrary, the expenses of the instrument (*escriptura*) shall be to the charge (*cargo*) of the buyer, and those of tradition to that of the seller.

Art. 1130. If the sale is not on credit, the vendor is not obliged to deliver the thing before receiving the price.

Art. 1131. Notwithstanding the term agreed upon for payment, if the buyer becomes insolvent before the tradition, the vendor may suspend (*sobrestar*) the delivery of the thing, until the buyer gives him a bond to pay in the time agreed.

Art. 1132. Ascendants cannot sell to descendants, unless the other descendants expressly consent.

Art. 1133. The following things cannot be bought, even at public sale (*hasta publica*):

I. By guardians, curators, executors and administrators, the property entrusted to their care or administration.

II. By mandatories, the property, with the administration or alienation of which they are charged.

III. By public employes, the property of the Union, of the States or of the Municipios, which are under their administration, direct or indirect. The same disposition applies to the judges, arbitrators, or experts (*peritos*) who, in any manner, may influence the act or the price of the sale.

IV. By judges, employes of the treasury, secretaries of tribunals, clerks (*escrivães*) or other officials of justice, the property, or rights, which are in litigation (*sobre que se litigar*) in the tribunal, court (*juizo*) or council, in the

place where these functionaries serve, or to which their authority extends.

Art. 1134. This prohibition comprehends the sale or assignment of credit, unless it is either between co-heirs, or in payment of debt, or for guaranty of property already belonging to persons designated in the preceding Article, no. IV.

Art. 1135. If the sale is made by sample (*á vista de amostras*), it is understood that the vendor assures the thing sold to have the qualities shown by the sample.

Art. 1136. If in the sale of an immovable, the price is stipulated according to measurement, or the area of it is stated as determined, and the area does not correspond, in either of the cases, to the dimensions given, the buyer has the right to require that the area be made good (*o complemento da área*), and if this is not possible, he has the right to demand the rescission of the contract or the proportional abatement of the price. He has not this right, however, if the immovable was sold as a certain and determined (*discriminada*) thing, the reference to its dimensions being merely declaratory (*enunciativa*).

Single Paragraph. It is presumed that the reference to the dimensions was simply enunciative, when the difference found does not exceed one-twentieth of the total extension enounced.

Art. 1137. In every instrument (*escriptura*) of transfer of immovables, there shall be transcribed the certificates showing that they have settled (*se acharem quites*) with the Federal, State or Municipal Treasury for any taxes to which they may be subject.

Single Paragraph. The negative certificate exonerates the immovable and exempts the acquirer from all responsibility.

Art. 1138. In things sold jointly, the occult defect of one does not authorize the rejection of all.

Art. 1139. A joint-owner (*condomínio*) of an indivisible thing cannot sell his part to strangers, if the other joint-owner (*consorte*) wishes it, for the same price (*tanto por tanto*). The joint-owner who is not notified of the sale, may, upon depositing the price, have for himself the part sold to a stranger, if he makes demand for it (*o requerer*) within the term of six months.

Single Paragraph. If the joint-owners are many, the one who has improvements of greatest value shall be preferred, and, in default of improvements, the one having the greatest share. If the shares are equal, the co-proprietors who wish it, shall have the part sold, upon first depositing the price.

*Section II. Of Special Clauses in Purchase and Sale.
Of Re-Purchase (Retrovenda).*

Art. 1140. The vendor may reserve to himself the right to recover, within a certain term (*prazo*) the immovable which he sold, upon restoring the price plus the expenses incurred by the purchaser.

Single Paragraph. The vendor shall also in this case reimburse the purchaser for the expenses employed in improvements upon the immovable, to the extent of the value added by these improvements to the property.

Art. 1141. The term for the redemption, or retraction, shall not exceed three years, under penalty of being held as not agreed upon (*não escripto*); it being presumed that the maximum term is stipulated, when the parties have not determined it.

Single Paragraph. The term of retraction, expressed or presumed, prevails even against an incapable. Upon the

expiration of the term, the right of retraction is extinguished, and the sale becomes irrevocable.

Art. 1142. In the re-purchase (*retrovenda*), the vendor preserves his action against third persons acquiring the re-purchased thing (*retrovendida*), although they did not know of the clause of retraction.

Art. 1143. If more than one person has the right of retraction upon the same thing, and only one exercises it, the purchaser may give notice to the others in order that they may agree upon it.

§ 1. If the interested parties fail to agree, or one of them does not wish to come in with the entire amount of the retraction, the right of all shall expire (*caducará*).

§ 2. If the different co-owners of the alienated estate do not retract it (*não retrovenderam*) jointly and by the same act, each one for himself may exercise his right of retraction upon the respective share, without the purchaser having the right to require the others to redeem it as a whole.

Of Sales Upon Approval (A contento).

Art. 1144. The sale upon approval (*a contento*) is considered made upon suspensive condition, if in the contract it has not been given expressly the character of a resolute condition.

Single Paragraph. In this species of sale is included that of goods (*generos*) which it is customary to try (*provar*), measure, weigh, or experiment with, before being accepted.

Art. 1145. The obligations of the buyer who receives the thing bought upon suspensive condition, are those of a mere bailee (*commodatario*) so long as he does not manifest his acceptance of it.

Art. 1146. If the buyer makes no declaration within the time (*prazo*), the sale shall be reputed as perfected, whether the condition be suspensive or resolute; the payment of the price, in the first case, being taken as an expression that he accepts the thing sold.

Art. 1147. If no time is stipulated for the declaration of the buyer, the seller has the right to notify him judicially to make it within a fixed and certain (*improrogavel*) time, under penalty of the sale being considered as perfected.

Art. 1148. The right resulting from the sale upon approval (*a contento*) is simply personal.

Of Pre-emption or Preference.

Art. 1149. Pre-emption, or preference, imposes upon the buyer the obligation to offer to the vendor the thing which the former is going to sell, or give in payment, in order that the latter may make use of his right of prelation in the purchase, at the same price (*tanto por tanto*).

Art. 1150. The Union, the State, or the Municipio, shall offer to the ex-proprietor the immovable expropriated at the price at which it was taken, in the event that it is not used for the purpose (*não tenha o destino*) for which it was expropriated.

Art. 1151. The vendor may also exercise his right of prelation, by giving notice of it to the purchaser, when he has knowledge that the latter is going to sell the thing.

Art. 1152. The right of pre-emption extends only to the situations indicated in Arts. 1149 and 1150, and to no other real right than that of ownership (*propriedade*).

Art. 1153. The right of pre-emption shall be lost (*cadu-*

cará) if not exercised in three days, if the thing is a movable, and, if an immovable, if it is not exercised within thirty days subsequent to that on which the buyer had advised (*affrontado*) the seller.

Art. 1154. When the right of pre-emption is stipulated in favor of two or more individuals in common, it can only be exercised with relation to the thing as a whole. If any of the persons entitled to it, loses or does not exercise his right, the others may make use of it in the form aforesaid.

Art. 1155. He who exercises the preference is obliged, under penalty of losing it, to pay, on like conditions, the price found or agreed upon.

Art. 1156. The buyer shall respond for losses and damages, if he did not give to the vendor knowledge of the price and advantages which are offered him for the thing.

Art. 1157. The right of preference cannot be assigned, nor does it pass to the heirs.

Of the Pact of Better Buyer.

Art. 1158. The contract of purchase and sale may be made with a clause of revocation (*de se desfazer*), if, within a certain time, anyone should appear and make a more advantageous offer (*offereça maior vantagem*).

This time shall not exceed one year, and the clause shall only be effective (*vigorará*) between the contracting parties.

Art. 1159. The pact of better buyer is good (*vale*) as a resolute condition, saving agreement to the contrary.

Art. 1160. This pact cannot exist in the sale of movables.

Art. 1161. The buyer has the preference over (*prefere*

a quem) the person who offers equal advantages shall be offered.

Art. 1162. If, within the term fixed, the seller does not accept an offer of greater advantage, the sale shall be regarded as definitive.

Of the Commissory Pact.

Art. 1163. When it is agreed that the sale shall be rescinded (*se desfazer*) if the price is not paid by a certain day, the seller, if not paid, may rescind (*desfazer*) the contract, or demand the price.

Single Paragraph. If, in such case, the seller does not demand the price within ten days after the time is expired, the sale shall remain rescinded as matter of law.

CHAPTER II.

OF EXCHANGE (TROCA).

Art. 1164. The dispositions referring to purchase and sale are applied to exchange (*troça*), with the following modifications:

I. Saving disposition to the contrary, each of the contracting parties shall pay one-half of the expenses of the contract (*instrumento*) of exchange.

II. Unequal exchanges between ascendants and descendants, without the express consent of the other descendants, are void.

CHAPTER III.

OF DONATION.

Section I. General Dispositions.

Art. 1165. The contract by which one person, through liberality, transfers from his own patrimony property or

advantages to that of another, who accepts them, is considered donation.

Art. 1166. The donor may affix a term for the donee to declare whether he accepts the liberality or not. When the donee, knowing of the term, does not make the declaration within it, it shall be understood that he accepted, if the donation is not subject to a charge.

Art. 1167. The donation made in contemplation of the deserts (*merecemento*) of the donee does not lose the character of liberality, neither does the remuneratory or encumbered donation lose such character, so far as it exceeds the value of the services remunerated or of the charge imposed.

Art. 1168. The donation shall be made by public act or by private instrument (Art. 134).

Single Paragraph. The verbal donation shall be valid, if it concerns movable property of small value and is immediately followed by tradition.

Art. 1169. The donation made to one unborn (*ao nascituro*) shall be valid, if accepted by the parents.

Art. 1170. Persons who cannot contract are empowered, however, to accept unconditional (*puras*) donations.

Art. 1171. The donation by the parents to the children imports an advancement of the inheritance (*legitima*).

Art. 1172. The donation in the form of a periodical subvention to the beneficiary is extinguished by the death of the donor, unless otherwise provided by him.

Art. 1173. The donation made in contemplation of future marriage with a certain and determined person, whether by the engaged parties (*nubentes*) between themselves, or by a third person to one of them, to both, or to

the children which, in the future, they may have of each other, cannot be impugned for want of acceptance, and shall only be ineffective if the marriage is not realized.

Art. 1174. The donor may stipulate that the property donated shall return to his patrimony if he survives the donee.

Art. 1175. The donation of all his property, without reservation of a part, or sufficient income (*renda*) for the support of the donor, is void.

Art. 1176. The donation is also void with respect to the part, which exceeds that which the donor, at the time of the liberality, could dispose of by testament.

Art. 1177. The donation of the adulterous spouse to his or her accomplice may be annulled by the other spouse, or his or her necessary heirs within (*até*) two years after the dissolution of the conjugal society (Arts. 178, § 7, no. VI and 248, no. IV).

Art. 1178. Saving declaration to the contrary, the donation in common to more than one person is understood as distributed among them equally.

Single Paragraph. If the donees, in such case, are husband and wife, the donation shall subsist in its entirety to the surviving spouse.

Art. 1179. The donor is not obliged to pay moratory interest, nor is he subject to eviction, except in the case of Art. 285.

Art. 1180. The donee is obliged to comply with the charges (*encargos*) upon the donation, in the event that they are for the benefit of the donor, of a third person, or of the general interest.

Single Paragraph. If the charge (*encargo*) is of this

latter kind, the Ministerio Publico may require its execution, after the death of the donor, if he has not done it.

Section II. Of the Revocation of the Donation.

Art. 1181. Besides the cases common to all contracts, the donation is also revoked by the ingratitude of the donee.

Single Paragraph. The onerous donation may be revoked for non-performance of the charge (*encargo*), when the donee becomes in default (*incorrer em mora*).

Art. 1182. The right to revoke the liberality for the ingratitude of the donee, cannot be renounced in advance.

Art. 1183. Donations can only be revoked for ingratitude:

- I. If the donee attempted the life of the donor.
- II. If he committed a physical offence against him.
- III. If he insulted (*injuriou*) or calumniated him gravely.
- IV. If, being able to furnish them to him, he refused ailments to the donor, of which he was in need.

Art. 1184. The revocation for any of these motives shall be sued for within one year, counted from the time that the fact which authorizes it came to the knowledge of the donor (Art. 178, § 6, no. I).

Art. 1185. The right granted in the preceding Article is not transmitted to the heirs of the donor, nor does it prejudice those of the donee. But the former may prosecute the action initiated by the donor, continuing it against the heirs of the donee, if he should de cease after answering the suit.

Art. 1186. The revocation for ingratitude does not prejudice the rights acquired by a third person, nor does it

oblige the donee to restore the fruits which he received before answering the suit; but it subjects him to pay those subsequent thereto, and, when he cannot restore in kind the thing donated, to make indemnity for them at the average (*pelo meio termo*) of their value.

Art. 1187. The following are not revoked for ingratitude:

- I. Donations purely remuneratory.
- II. Those encumbered with a charge (*encargo*).
- III. Those which are made in compliance with natural obligation.
- IV. Those for a determined marriage.

CHAPTER IV.

OF RENTING AND HIRING (*LOCAÇÃO*).

Section I. Of the Hiring of Things.

General Dispositions.

Art. 1188. In the hiring (*locação*) of things, one of the parties obligates himself to grant (*ceder*) to the other, for a determined time, or not, the use and enjoyment of a non-fungible thing, for a certain compensation (*retribuição*).

Art. 1189. The lessor (*locador*) is obliged:

I. To deliver to the hirer (*locatario*) the thing hired, with its appurtenances (*pertencas*), in a condition to serve the purpose for which it is intended, and to maintain it in this condition during the time of the contract, saving express clause to the contrary.

II. To guaranty to him, during the time of the contract, the pacific use of the thing.

Art. 1190. If, during the location, the thing hired deteriorates, without the fault of the hirer (*locatario*) he

may demand a proportional reduction of the rental (*o aluguer*), or rescind the contract, in the event that the thing no longer serves for the purpose for which it was intended.

Art. 1191. The lessor (*locador*) shall protect (*resguardará*) the hirer from the annoyances and disturbances (*embaraços e turbações*) of third persons who may have or pretend to have rights to the thing hired (*coisa alugada*), and shall respond for its vices or defects anterior to the location.

Art. 1192. The hirer (*locatario*) is obliged :

I. To make use of (*servir-se de*) the thing hired for the purposes agreed, or presumed, according to its nature and the circumstances, as well as to treat it with the same care as if it were his own.

II. To pay the rental (*o aluguer*) punctually within the terms agreed, and in default of agreement, according to the custom of the place.

III. To bring to the knowledge of the lessor (*locador*) the claims (*turbações*) of third persons, which are claimed to be founded on right (Art. 1191).

IV. To restore the thing at the end of the location, in the condition in which he received it, saving the deteriorations natural to its regular use.

Art. 1193. If the hirer should employ the thing for a use different from that agreed, or from that for which it is intended, or if it is damaged by the abuse of the hirer, the lessor (*locador*), besides rescinding the contract, may demand losses and damages.

Single Paragraph. When a term is stipulated for the duration of the contract, the locator cannot retake the thing hired before its expiration without reimbursing the hirer

for the losses and damages resulting, nor can the hirer return it to the locator without paying the rental for the time which remains (*faltar*).

Art. 1194. The location for a determined time ceases by force of law upon the expiration of the time stipulated, independently of notification or notice (*aviso*).

Art. 1195. If, upon the expiration of the term, the hirer continues in possession of the thing hired, without objection (*oposição*) of the locator, the location shall be presumed extended (*prorogada*) for the same rental, but without determined term.

Art. 1196. If the hirer, being notified, does not restore the thing, he shall pay, so long as he has it in his power, the rental which the locator may see fit (*arbitrar*), and shall respond for the damage which it may suffer, although resulting from accident (*caso fortuito*).

Art. 1197. If, during the location, the thing is alienated, the acquirer shall not be obliged to respect the contract, if it does not contain a clause providing for its remaining in effect in case of alienation, and appear recorded (*constar*) in the public register.

Single Paragraph. In the locations of immovables, he cannot, however, oust (*despedir*) the hirer without observing the terms (*prazos*) of Article 1209.

Art. 1198. Upon the death of the locator, or of the hirer, the location for a determined time is transferred to his heirs.

Art. 1199. It is not lawful for the hirer to retain the thing hired, except in the case of necessary improvements, or in that of useful improvements, if they have been made with the express consent of the locator.

II. Of the Location of Estates (*Predios*).

Art. 1200. The location of estates (*predios*) may be stipulated for any term (*prazo*).

Art. 1201. If there is no express stipulation to the contrary, the hirer, in locations for determined time, may sub-rent (*sublocar*) the estate, in whole or in part, before or after having received it, and may even lend it, continuing responsible to the locator for the preservation of the immovable and the payment (*solução*) of the rental.

Single Paragraph. He may also assign the location, with the consent of the locator.

Art. 1202. The sub-lessee (*sublocatario*) responds, subsidiarily, to the landlord (*senhorio*) for the amount which he owes to the sublessor (*sublocador*), when the latter is sued (*demandado*), and even for the rentals which become due during the suit.

§ 1. In such case, upon notice of the action being given to the sub-lessee, if he does not at once declare that he has advanced rentals to the sub-lessor, all receipts for advanced payments shall be presumed fraudulent, unless they appear in writing with authentic and certain date.

§ 2. Saving the case of this Article, in the preceding dispositions, the sub-location does not establish rights or obligations between the sub-lessee and the landlord.

Art. 1203. If the location is rescinded, or expired, the sub-locations are resolved, saving the right of indemnization which the sub-lessee may have against the sub-lessor.

Art. 1204. During the location, the landlord (*o senhorio*) cannot change the form or the use (*destino*) of the leased estate.

Art. 1205. If the estate needs urgent repairs, the lessee shall be obliged to consent to them.

§ 1. If the repairs last more than fifteen days, he may demand a proportional abatement of the rental.

§ 2. If they last more than a month, and prevent (*tolherem*) the regular use of the estate, he may rescind the contract.

Art. 1206. All repairs which the estate may need shall be made by (*incumbirão*) the locator, saving express clause to the contrary.

Single Paragraph. The lessee is obliged to make upon the estate at his own account the small repairs for damages (*estragos*) which do not naturally arise from time or use.

Art. 1207. The lessee has the right to require of the landlord, when the latter delivers the estate to him, a written statement of its condition.

Art. 1208. The lessee shall respond for the burning (*incendio*) of the estate, if he does not prove accident (*caso fortuito*) or vis major, defective construction or propagation of fire originating on another estate.

Single Paragraph. If the estate has more than one tenant (*inquilino*), all shall respond for the fire (*incendio*), including the locator, if he lives upon it, each one in proportion to the part which he occupies, unless it is proven that the fire commenced in the part used by only one tenant (*morador*), who shall then be the only one responsible.

Art. 1209. The lessee of the estate, upon being notified to surrender it (*entregal-o*) because the locator does not wish (*por não convir*) to continue the location for an undetermined term, has the period of one month to disoccupy it, if it is urban, and of six months, if rustic (Art. 1197, Single Paragraph).

III. *Special Disposition as to Urban Estates.*

Art. 1210. If there is no stipulation to the contrary, the time of the location of an urban estate will be regulated by local usages.

IV. *Special Dispositions as to Rural Estates.*

Art. 1211. The lessee of a rustic estate shall use it for the purpose (*no mistér*) for which it is intended, in such way that it be not damaged, under penalty of the rescission of the contract and satisfaction of losses and damages.

Art. 1212. The location for an indefinite term is presumed to be contracted for the time indispensable to the lessee for one crop.

Art. 1213. In the location for an indetermined time, if the lessee does not wish to continue it, he shall notify the landlord six months before leaving it.

Art. 1214. Saving agreement to the contrary, neither sterility nor the failure (*mallogro*) of the crop through accident (*caso fortuito*) authorizes the lessee to demand an abatement of the rental.

Art. 1215. The lessee who is quitting (*que sae*) shall afford (*franqueará*) to the incoming one the use of the accommodations necessary for the latter to begin work; and, reciprocally, the incoming lessee shall facilitate to the outgoing one the use of whatever he needs for the crop, according to the custom of the place.

Section II. Of the Location of Services.

Art. 1216. Every kind of lawful service or work, material or immaterial, may be contracted for upon compensation.

Art. 1217. In the contract of location of services, when any of the parties cannot read or write, the instrument may be written and signed by request; and in this event, it must be signed by four witnesses.

Art. 1218. If the compensation (*retribuição*) is not stipulated, nor the parties come to an agreement, the same shall be fixed by arbitrament, according to the custom of the place, the time of service and its quality.

Art. 1219. The retribution shall be paid after the service is rendered, if, by agreement or custom, it is not to be paid in advance, or paid in installments (*prestações*).

Art. 1220. The location of services cannot be contracted for more than four years, although the contract may have for its cause the payment of a debt of the locator or is intended for the execution of a certain and determined work. In this case, the contract shall be taken as terminated at the end of four years, although the work is not concluded (Art. 1225).

Art. 1221. If no term is stipulated, and it is not inferred from the nature of the contract or from the custom of the place, either of the parties, at his will, and upon previous notice, may rescind the contract.

Single Paragraph. The notice shall be given :

I. Eight days in advance, if the salary has been fixed by the time of one month, or more.

II. Four days in advance, if the salary has been agreed by the week or fortnight.

III. The day before (*de vespera*), when it has been contracted for less than seven days.

Art. 1222. In the contract of location of agricultural services, there being no term stipulated, it is presumed to be for one agricultural year, which terminates with the

harvest or gathering (*safra*) of the principal crop (*cultura*) raised by the lessee (*locatario*).

Art. 1223. The time in which the employe (*locador*), through his own fault, failed to serve, is not counted in the term of the contract.

Art. 1224. If the employe (*locador*) was not contracted for a certain and determined work, it shall be understood that he obligated himself for every and any kind of service compatible with his strength and conditions.

Art. 1225. The employe (*locador*) contracted for a certain time or for a determined work, cannot absent himself or quit without just cause, before the time is fulfilled or the work is concluded (Art. 1220).

Single Paragraph. If he quits (*se despedir*) without just cause, he shall have the right to the retribution become due (*vencida*), but shall respond for losses and damages.

Art. 1226. Just causes for which the employe (*locador*) may end the contract, are:

I. Having to exercise public functions, or discharge legal duties, either of which are incompatible with the continuation of the service.

II. Becoming disabled (*inhabilitado*), by *vis major*, from fulfilling the contract.

III. The employer (*locatario*) requiring of the employe services superior to his strength, forbidden by law, contrary to good customs, or foreign to the contract.

IV. The employer treating the employe with excessive rigor, or not giving him proper alimentation.

V. The employe being exposed to manifest danger of damage (*damno*) or considerable harm (*mal*).

VI. The employer not performing the obligations of the contract.

VII. The employer offending or attempting to offend the employe in the honor of a person of his family.

VIII. The employer dying.

Art. 1227. The employe may take the contract as ended in any of the cases of the preceding Article, although he has agreed the contrary.

§ 1. If he quits for any of the motives specified in the preceding Article, nos. I, II, V and VIII, the employe shall have the right to the remuneration become due, without any responsibility to the employer.

§ 2. If he quits for any of the motives designated in that Article, nos. III, IV, VI and VII, or for the failure (*falta*) of the employer in the case of no. V, he shall have the right to the compensation become due, together with that of the following Article.

Art. 1228. The employer who without just cause discharges the employe, shall be obliged to pay him entirely the retribution become due, and one-half of that to which he would be entitled from then to the legal termination (*termo*) of the contract.

Art. 1229. Just causes on the part of the employer for ending the contract, are :

I. *Vis major* which prevents (*impossibilite*) him from fulfilling his obligations.

II. Offence of the employe to the employer in the honor of a person of his family.

III. Sickness, or any other cause which renders the employe unable to render the services contracted.

IV. Vices or bad conduct of the employe.

V. Failure (*falta*) of the employe in the observance of the contract.

VI. Want of skill (*impericia*) of the employe in the service contracted.

Art. 1230. In agricultural hiring, the employer is obliged to give to the employe a certificate (*atestado*) that the contract is ended; and, in the event of refusal, the judge having jurisdiction (*a quem compete*) must issue it, fining the recusant from 100\$000 to 200\$000, in favor of the employe.

The employer is under this same obligation if, without just cause, he dispenses with the services of the employe, or if the latter, for a justified motive, puts an end to the contract.

However, if, in either of these cases (*hypotheses*), the employe is in debt, this circumstance shall be stated in the certificate, and the new employer will be responsible for the due payment.

Art. 1231. The employer may discharge the employe for any of the causes specified in Art. 1229, although he has agreed the contrary.

§ 1. If the employe is discharged for any of the causes there specified under nos. I, III and V, he shall have the right to the retribution become due, without any responsibility towards the employer.

§ 2. If he is dismissed for any of the grounds there admitted under nos. II, IV and VI, he shall be entitled to the retribution become due, responding, however, for losses and damages.

Art. 1232. Neither can the employer, although he may have otherwise contracted, transfer to another the right to the services agreed upon, nor can the employe, without the approval of the employer, furnish a substitute to perform them.

Art. 1233. The contract of hiring (*locação*) of services ends with the death of the employe (*locador*).

Art. 1234. Although he may have stipulated otherwise,

the employer cannot collect from the employe interest upon the wages (*soldadas*) which he advances to him, nor, during the time of the contract, upon any debt which the employe may be paying with services.

Art. 1235. He who entices away (*alliciar*) persons obligated to another by hiring (*locação*) of agricultural services, whether or not there is an instrument of contract, shall pay to the employer prejudiced thereby, double the amount which the employe would be entitled to receive, under the broken agreement (*ajuste desfeito*) during four years.

Art. 1236. The alienation of the agricultural estate where the contract (*locação*) of services is performed (*se opéra*), does not involve the rescission of the contract; saving to the employe the option between continuing it with the acquirer of the property, or with the previous employer.

Section III. Of Building Contracts (Empreitada).

Art. 1237. The contractor (*empreiteiro*) of a work (*obra*) may contribute to it either his work (*trabalho*) alone, or work and materials.

Art. 1238. When the contractor furnishes the materials, the risks are at his account until the moment of the delivery of the work, to the satisfaction (*a contento*) of him who ordered it, if the latter is not in default in receiving it. If he is, the risks are equally at the account of the two parties.

Art. 1239. If the contractor only furnished the workmanship (*mão de obra*), all the risks for which he was not at fault, are at the account of the owner.

Art. 1240. Where the contract (*empreitada*) is only for labor (Art. 1239), if the thing perishes before delivery, without default (*mora*) of the owner, or fault (*culpa*) of

the contractor, the latter shall also lose his pay (*salario*), unless he proves that the loss resulted from defect of the materials, and that he objected (*reclamára*) in time against their quantity or quality.

Art. 1241. If the work consists (*constar*) of distinct parts, or is of the kind that is determined by measure, the contractor shall also have the right to have it verified by measure, or according to the parts into which it is divided.

Single Paragraph. All that is paid for is presumed verified.

Art. 1242. When the work is concluded in accordance with the agreement (*ajuste*), or the custom of the place, the owner is obliged to receive it. He may, however, reject it, if the contractor departed from the instructions received and the plans furnished, or from the technical rules in works of such nature.

Art. 1243. In the case of the preceding Article, Second Part, he who ordered the work may, instead of rejecting it, receive it with an abatement of the price.

Art. 1244. The contractor is obliged to pay for the materials which he received, if he spoiled them (*os inutilizar*) through want of skill.

Art. 1245. In building contracts for buildings or other considerable constructions, the contractor of materials and execution shall respond, during five years, for the solidity and safety of the work, as well by reason of the materials, as of the soil, unless, with respect to the latter, on finding it not to be firm, he warned in time the owner of the work.

Art. 1246. The architect, or builder (*constructor*) who, by a building contract (*empreitada*), undertakes to execute a work according to plans accepted by the party who orders the work, shall not have the right to demand an increase of the price, although that of wages or material is increased

(*encareça*), nor although the work agreed upon (*ajustada*) was altered or increased, with relation to the plant (*planta*) unless it was increased, or altered, by written instructions from the other contracting party and exhibited by the contractor (*empreiteiro*).

Art. 1247. The owner of the work who, outside of the cases established in numbers III, IV and V of Art. 1229, rescinds the contract in spite of its execution being commenced, shall indemnify the contractor for the expenses and for the work done, as well as for the gain (*lucros*) which he would have had, if he had finished the work.

CHAPTER V.

OF LOANS (*EMPRESTIMO*).

Section I. Of Commodatum (Commodato).

Art. 1248. Commodatum is the gratuitous loan of non-fungible things. It is perfected by the tradition of the object.

Art. 1249. Guardians, curators, and in general all administrators of the property of others, cannot give the property entrusted to their care, in commodatum without special authorization.

Art. 1250. If the commodatum has no conventional term (*prazo*), it shall be presumed to be the time necessary for the use granted; the lender (*commodante*) cannot, saving an unforeseen and urgent necessity, recognized by the judge, suspend the use and enjoyment of the thing loaned, before the expiration of the conventional term, or of that which is determined by the use granted.

Art. 1251. The borrower (*commodatario*) is obliged to preserve the thing loaned as if it were his own, and he cannot use it except in accordance with the contract, or with

the nature of the thing, under penalty of responding for losses and damages.

Art. 1252. If the borrower is in default, besides responding for it, he shall pay the rent of the thing during the time of the delay (*atrazo*) in restoring it.

Art. 1253. If the object of the loan is exposed to risk together with others of the borrower, and the latter should prefer the salvation of his own, abandoning that of the lender, he shall respond for the damage which may occur, although it may be attributed to accident (*caso fortuito*) or *vis major*.

Art. 1254. The borrower can never recover from the lender the expenses incurred (*feitas*) by the use and enjoyment of the thing loaned.

Art. 1255. If two or more persons are simultaneously borrowers of a thing, they shall be solidarily responsible to the lender.

Section II. Of *Mutuum* (*Mutuo*).

Art. 1256. *Mutuum* is the loan of fungible things. The borrower (*mutuario*) is obliged to restore to the lender (*mutuante*) that which he received from him in things of the same kind, quality and quantity.

Art. 1257. This loan transfers the ownership (*dominio*) of the thing loaned to the borrower, at whose account are all the risks of it after the tradition.

Art. 1258. In the *mutuum* of gold and silver moneys it may be agreed that the payment shall be effected in moneys of same kinds and quantities, whatever may have been subsequently the fluctuation of their values.

Art. 1259. The *mutuum* made to a minor person, without the previous authorization of the person under whose

care he is, cannot be recovered either from the borrower, or from his sureties or sponsors (*abonadores*) (Art. 1502).

Art. 1260. The disposition of the preceding Article ceases:

I. If the person whose authorization the borrower needed in order to contract the loan, afterwards ratifies it.

II. If the minor, such person being absent, was obliged to contract the loan for his habitual support (*alimentos*).

III. If the minor has property of the class indicated in Articles 391, no. II. But, in such case, the creditor's execution cannot exceed the extent of such property (*não lhes poderá ultrapassar as forças*).

Art. 1261. The lender may require a guaranty for restitution, if before maturity the borrower should suffer a notorious change of fortune.

Art. 1262. It is permitted, but only by express clause, to fix interest to the loan of money or of other fungible things.

Such interest may be fixed below or above the legal rate (Art. 1062), with or without compounding (*capitalização*).

Art. 1263. The borrower who pays interest not stipulated, cannot recover it or apply it to the principal (*capital*).

Art. 1264. If the term of the loan (*mutuo*) is not expressly agreed, it shall be:

I. Until the next harvest, if the loan is of agricultural products, either for consumption or for sowing.

II. For thirty days, at least, unless proof to the contrary, if it is of money.

III. For the space of time which the lender (*mutuante*) declares, if it is for any other fungible thing.

CHAPTER VI.

OF DEPOSIT (BAILMENTS).

Section I. Of Voluntary Deposit.

Art. 1265. By the contract of deposit the depositary receives a movable thing, to keep, until the depositor reclaims it.

Single Paragraph. This contract is gratuitous; but the parties may stipulate that the depositary shall be rewarded (*gratificado*).

Art. 1266. The depositary is obliged to use (*ter*) in the keeping and preservation of the thing deposited, the care and diligence which he is accustomed to use with what belongs to him, as well as to restore it, with all its fruits and increase, when the depositor demands it of him.

Art. 1267. If the deposit was delivered closed, glued, or sealed (*sellado ou lacrado*), it shall be maintained in this same condition; and, if it is broken open (*devassado*), the depositary shall incur the presumption of fault (*culpa*).

Art. 1268. Although the contract fixes the term for restitution, the depositary shall deliver the deposit whenever (*logo que*) it is demanded of him, unless the object is judicially embargoed, or execution of which the depositary has notice, is pending over it, or he has reasonable cause (*motivo*) to suspect that the thing was stolen or robbed (Art. 1273).

Art. 1269. In the case of the preceding Article, last part, the depositary, stating the ground of his suspicion, shall require that the object be placed in the public depository.

Art. 1270. The depositary shall be empowered, moreover, to require the judicial deposit of the thing, when, for

a plausible motive, he cannot keep it, and the depositor does not wish to receive it from him.

Art. 1271. The depositary who through *vis major* has lost the thing deposited and received another in its place, is obliged to deliver the latter to the depositor, and to assign to him the actions which in the case he may have against the third person responsible for the restitution of the first thing.

Art. 1272. The heir of the depositary, who in good faith sold the thing deposited, is obliged to assist the depositor in its recovery, and to restore to the buyer the price received.

Art. 1273. Except in the cases provided in Arts. 1268 and 1269, the depositary cannot refuse (*furtar-se á*) the restitution of the deposit, by alleging that the thing does not belong to the depositor, or claiming a set-off (*compensação*), unless he bases his refusal (*se fundar*) on another deposit (Art. 1287).

Art. 1274. If there are two or more depositors, and the thing is divisible, the depositary shall deliver to each one only his respective part, unless there is solidarity between them.

Art. 1275. Under penalty of responding for losses and damages, the depositary cannot, without express permit of the depositor, make use (*servir-se de*) of the thing deposited.

Art. 1276. If the depositary becomes incapable, the person who assumes the administration of his property shall proceed (*diligenciará*) immediately to restore the thing deposited, and, if the depositor does not wish or is not able to receive it, shall place it in the public depositary; or shall procure the appointment of another depositary.

Art. 1277. The depositary does not respond for acci-

dents (*casos fortuitos*) or *vis major*; but, in order to avail himself of the excuse, he must prove them.

Art. 1278. The depositor is obliged to pay to the depositary the expenses incurred by the thing and the damages (*perjuizos*) which may arise from the deposit.

Art. 1279. The depositary may retain the thing until he is paid the liquid value of the expenses or of the damages to which the preceding Article refers, proving immediately such damages or such expenses.

Single Paragraph. If such expenses or damages are not sufficiently proven, or are unliquidated, the depositary may require a sufficient bond from the depositor, or, in default of it, the removal of the thing to the public depositary, until they are liquidated.

Art. 1280. The deposit of fungible things, in which the depositary obligates himself to restore objects of the same kind, quality and quantity, is governed by the provisions in regard to mutuum (Arts. 1256 to 1264).

Art. 1281. The voluntary deposit shall be proven by writing.

Section II. Of Necessary Deposit.

Art. 1282. A necessary deposit is:

I. That which is made in the discharge of a legal obligation (Art. 1283).

II. That which is effected on the occasion of some calamity, such as fire, flood, shipwreck, or sacking (*saque*).

Art. 1283. The deposit mentioned in the preceding Article, no. I, is governed by the provisions of law applicable thereto, and, where that is silent or deficient, by those applicable to voluntary deposits (Arts. 1265 to 1281).

Single Paragraph. Those provisions apply, moreover,

to the deposits indicated in Art. 1282, no. II; the latter may be shown by any means of proof.

Art. 1284. Similar to the latter kind of deposits are those of the baggage of travelers, guests or customers in hotels where they are stopping, inns or boarding-houses (*casas de pensão*).

Single Paragraph. The hotel-keepers or inn-keepers shall respond for such baggage as depositaries, as well as for thefts and robberies perpetrated by the persons employed in or admitted into their houses.

Art. 1285. The responsibility of hotel-keepers or inn-keepers, in the cases of the preceding Article, ceases:

I. If they prove that the acts prejudicial to the guests, travelers or customers could not have been avoided.

II. If *vis major* occurs, as in the cases of house-breaking (*escalada*), invasion of the house, robbery by armed force (*a mão armada*), or similar violences.

Art. 1286. In the case (*hypothese*) of Art. 1284, the remuneration for the deposit is included in the price of entertainment (*hospedagem*).

Art. 1287. Whether the deposit is voluntary or necessary, the depositary who does not make restitution when demanded shall be compelled to make it by means of imprisonment (*prisão*) not exceeding one year, and to make good (*rearcir*) the damages (Art. 1273).

CHAPTER VII.

OF MANDATE (POWERS OF ATTORNEY).

Section I. General Dispositions.

Art. 1288. Mandate is effected (*opéra-se*) when some one receives from another powers to perform (*practicar*) acts or administer interests in his name.

The instrument of the mandate is the power of attorney (*procuração*).

Art. 1289. All persons of lawful age (*maiores*) or emancipated, in the enjoyment of civil rights, are capable (*aptas*) to give powers of attorney by means of a private instrument in their own handwriting (*do proprio punho*).

§ 1. The private instrument must contain the designation of the State, of the city or civil district (*circumscrição*) in which it is made (*passado*), the date, the name of the maker (*outorgante*), the designation (*individualização*) of the person to whom it is made (*de quem seja o outorgado*), as well as the purpose (*objectivo*) of the grant (*outorga*), the nature, designation and extent of the powers conferred.

§ 2. If two or more makers join in the same instrument, it shall be written by one and signed by all.

§ 3. For an act (*acto*) which does not require a public instrument, the mandate, although granted by public instrument, may be substituted (*substabelecer-se*) by means of a private instrument.

§ 4. The acknowledgment (*reconhecimento*) of the handwriting (*letra*) and signature (*firma*) of the private instrument is an essential condition to its validity in relation to third persons.

Art. 1290. The mandate may be express or tacit, verbal or written.

Single Paragraph. It is presumed gratuitous, when no compensation is stipulated, unless the object of the mandate is such a matter as the mandatary treats as a business (*por officio*) or lucrative profession.

Art. 1291. For acts which require a public or private instrument, the verbal mandate is not admitted.

Art. 1292. The acceptance of the mandate may be tacit, and results from commencing its execution.

Art. 1293. The mandate is presumed accepted between absent persons, when the business for which it was given is of the profession of the mandatary, relates to his official character (*qualidade*), or was offered through (*mediante*) publicity, and the mandatary does not immediately make known his refusal.

Art. 1294. The mandate may be special for one or more determinate matters (*negócios*), or general for all those of the grantor (*mandante*).

Art. 1295. The mandate in general terms confers only powers of administration.

§ 1. In order to alienate, mortgage, compromise (*transigir*), or practice any other acts whatever which are beyond (*exorbitem*) those of ordinary administration, the power of attorney (*procuração*) requires (*depende de*) special and express powers.

§ 2. The power to compromise (*transigir*) (Arts. 1025 to 1036), does not confer that to sign an arbitration (*compromisso*) (Arts. 1037 to 1048).

Art. 1296. The grantor (*mandante*) may ratify or impugn the acts practiced in his name without sufficient powers.

Single Paragraph. The ratification must be express or result from an unequivocal act; and it will retroact to the date of the act.

Art. 1297. The mandatary who exceeds the powers of the mandate, or proceeds contrary to them, shall be reputed a mere volunteer agent (*gestor de negócios*), so long as the grantor does not ratify his acts.

Art. 1298. A minor over 16 but under 21 years of age,

not emancipated (Art. 9, no. I), may be a mandatary, but the principal has no action against him except in conformity with the general rules applicable to obligations contracted by minors.

Art. 1299. The married woman cannot accept a mandate without the authorization of her husband.

Section II. Of the Obligations of the Mandatary.

Art. 1300. The mandatary is obliged to apply all his habitual diligence in the execution of the mandate, and to indemnify any damage caused by his fault or by that of anyone to whom he substitutes (*a quem substabelecer*), without authorization, powers which he should exercise personally.

§ 1. If, notwithstanding the prohibition of the principal, the mandatary permits himself to be substituted in the execution of the mandate, he shall respond to his principal (*constituente*) for the damages accruing under the management (*gerencia*) of the substitute, although arising from accident (*caso fortuito*), unless he proves that the accident would have happened, although there had been no substitution (*substablecimiento*).

§ 2. If there are powers of substitution, the mandatary shall only be chargeable for the damages caused by the substitute, if he is notoriously incapable, or insolvent.

Art. 1301. The mandatary is obliged to give accounts of his management (*gerencia*) to the principal, and to transfer to him the advantages arising from the mandate, by whatever title it may be.

Art. 1302. The mandatary cannot compensate (set-off) the damages which he may cause with the profits which, on the other hand, he may have gained for his principal.

Art. 1303. For the sums which he should deliver to

the principal, or received for expenses, but employed to his own profit, the mandatary shall pay interest, from the time of his abuse (*em que abusou*).

Art. 1304. If there are two or more mandataries appointed in the same instrument, it is understood that they are successive, if they are not expressly declared joint, or solidary, or not specifically designated for different acts.

Art. 1305. The mandatary is obliged to exhibit the instrument of mandate to the persons with whom he deals in the name of the principal, under penalty of responding to them for any act which exceeds his powers.

Art. 1306. The third person, who, after knowing the powers of the mandatary, makes a contract with him exceeding (*exorbitante*) the mandate, neither has an action against the mandatary, unless the latter promised him the ratification of the principal, or made himself personally responsible for the contract, nor against the principal, unless the latter has ratified the excess of the attorney-in-fact (*procurador*).

Art. 1307. If the mandatary acts (*obrar*) in his own name, the principal shall have no action against those who contracted with him, nor the latter against the principal.

In such case, the mandatary shall be directly obligated, as if the business were his own, to the person with whom he contracted.

Art. 1308. Although knowing of the death, interdiction or change of status of the principal, the mandatary must conclude the business already commenced, if there is danger in delay.

Section III. Of the Obligations of the Principal.

Art. 1309. The principal is obliged to satisfy all the obligations contracted by the mandatary, in conformity

with the mandate conferred, and to advance the amount of the expenses necessary to its execution, when the mandatary requests it of him.

Art. 1310. The principal is obliged to pay the mandatary the remuneration agreed and the expenses of the execution of the mandate, although the business did not produce the expected result, unless the mandatary is at fault.

Art. 1311. The sums advanced by the mandatary for the execution of the contract, bear interest from the date of the disbursement.

Art. 1312. The principal is equally obliged to reimburse the mandatary for the losses which he may suffer by the execution of the mandate, provided that they do not result from his own fault or excess of powers.

Art. 1313. Although the mandatary may act contrary to the instructions of the principal, if he did not exceed the limits of the mandate, the principal shall be obligated towards those with whom his attorney-in-fact contracted; but he shall have an action against the latter for the losses and damages resulting from the non-observance of the instructions.

Art. 1314. If the mandate was granted by two or more persons, and for a common business, each one shall be solidarily responsible to the mandatary for all the undertakings (*compromissos*) and effects of the mandate, saving a regressive right, for the amounts which he may pay, against the other principals.

Art. 1315. The mandatary has the right of retention upon the object of the mandate, until he is reimbursed for what he expended in the discharge of his commission.

Section IV. Of the Extinction of the Mandate.

Art. 1316. The mandate ceases :

- I. By revocation or renouncement.
- II. By the death or interdiction of one of the parties.
- III. By the change of status which incapacitates (*inhabilita*) the principal for conferring the powers, or the mandatary for exercising them.
- IV. By the termination of the term (*prazo*), or by the conclusion of the business.

Art. 1317. The mandate is irrevocable :

- I. When it has been agreed that the principal cannot revoke it, or the procuration given is in his own cause (*ou for em causa propria a procuração dada*).
- II. In cases, in general, in which it is a condition of a bilateral contract, or the means of performing an obligation contracted, as in bills of exchange (*letras*) and orders, the mandate to pay them.
- III. When conferred upon a partner (*socio*), as administrator or liquidator of the society, by disposition of the social contract, unless it is otherwise (*diversamente*) disposed in the by-laws (*estatutos*), or in a special text of law.

Art. 1318. The revocation of the mandate, if notified only to the mandatary, cannot be pleaded against third persons, who, in ignorance of it, treat with him in good faith; but the actions are saved to which the principal may be entitled in the case, against the attorney-in-fact (*procurador*).

Art. 1319. As soon as the appointment of another for the same business, is communicated to the mandatary, the previous mandate shall be considered as revoked.

Art. 1320. The renouncement of the mandate shall be communicated to the principal, who, if he is prejudiced by its inopportuneness, or by the want of time, in order to pro-

vide for the substitution of the attorney-in-fact, shall be indemnified by the mandatary, unless the latter proves that he could not continue in the mandate without considerable prejudice.

Art. 1321. Acts agreed upon with them in the name of the principal by the mandatary, are valid with respect to third parties contracting in good faith, where the mandatary did not know of the death of the principal, or of the extinction, for any other cause, of the mandate (Art. 1316).

Art. 1322. If the mandatary should decease, pending the business committed to him, the heirs, having knowledge of the mandate, shall advise the principal, and shall perform such acts (*providenciário*) in his behalf as the circumstances may require.

Art. 1323. The heirs, in the case of the preceding Article, must limit themselves to conservatory measures, or continue the pending matters which cannot be delayed without danger, regulating their services within this limit by the same rules (*normas*) to which those of the mandatary are subject.

Section V. Of the Judicial Mandate.

Art. 1324. The judicial mandate may be conferred by public or private instrument, duly authenticated, upon a person who can practice in court (*procurar em juízo*).

Art. 1325. All who are legally habilitated may be procurators in court, who are not:

I. Minors under twenty-one years, not emancipated or not declared of age (*maiores*).

II. Judges in exercise.

III. Clerks (*escrições*) or other judicial functionaries, in suits pending in the courts (*juízos*) where they serve, unless they are conducting their own causes.

IV. Those inhibited by sentence from practicing in court, or from exercising a public office.

V. Ascendants, descendants, or brothers of the judge of the cause.

VI. Ascendants or descendants of the adverse party, except in their own causes.

Art. 1326. A mandate for the bar (*fôro*) in general, does not confer powers for acts which require special powers.

Art. 1327. Where two or more attorneys (*procuradores*) are appointed for the same cause and by the same person, they are considered as appointed the one in default of the other, and in the order in which they are named, if they are not joint (*solidarios*). But the joint appointment may contain a clause that one shall do nothing without the others.

Art. 1328. The substitution, without reservation of powers, not being notified to the principal, does not exempt the procurator from responding for the obligations of the mandate.

Art. 1329. Under penalty of responding for the resulting damage, the lawyer, or procurator, who accepts the employment (*procuratura*), cannot excuse himself without just cause, and if he has such cause, he shall advise the principal in time, so that he may appoint a successor to him.

Art. 1330. The obligations of the lawyer and of the procurator shall be determined, not only by the terms of the procuration, but, and principally, by the contract, written or verbal, by which his services have been engaged (*ajustado*).

CHAPTER VIII.

OF THE UNAUTHORIZED CONDUCT OF BUSINESS (GESTÃO).

Art. 1331. One who, without authorization of the interested party, intervenes in the conduct (*gestão*) of the business of another, shall conduct it according to the interest and presumable will of its owner, being responsible to the latter and to persons with whom he deals.

Art. 1332. If the gestion is initiated against the manifest or presumable will of the interested party, the actor (*gestor*) shall respond even for accidents, if he does not prove that they would have happened although he had not intervened (*se houvesse abstido*).

Art. 1333. In the case of the preceding Article, if the damages caused by the gestion exceed the benefits, the owner (*dono*) of the business may require the gestor to restore things to their previous condition, or to indemnify him for the difference.

Art. 1334. As soon as possible (*ser possa*), the gestor shall advise the owner of the business of the gestion which he has assumed, and shall await his reply, if no danger may result from the delay.

Art. 1335. So long as the owner does not act (*providenciar*), the gestor shall attend (*velará*) to the business, and bring it to an end; and, if the owner should die during the gestion, the gestor shall await the instructions of the heirs, but without neglecting, in the meanwhile, such steps as the case may require.

Art. 1336. The gestor shall devote all his habitual diligence to the administration of the business, reimbursing the owner for all damage resulting from any fault (*culpa*) in the gestion.

Art. 1337. If the gestor permits another to substitute him, he shall respond for the failures (*faltas*) of the substitute, although he be a proper (*idonea*) person, without prejudice to the action which he or the owner of the business may have against him.

Single Paragraph. If there is more than one gestor, their responsibility shall be solidary.

Art. 1338. The gestor responds for accident (*caso fortuito*), when he engages in risky operations, although the owner is in the habit of doing so, or when he neglects (*preterir*) the interests of the latter for the sake of his own (*por amor dos seus*).

Single Paragraph. Notwithstanding, if the owner wishes to avail himself of the gestion, he shall be obliged to indemnify the gestor for the necessary expenses which he has incurred, and the damages which he may have suffered on account of the gestion.

Art. 1339. If the business is usefully administered, the owner shall perform the obligations contracted in his name, reimbursing the gestor for the necessary or useful expenses which he has incurred, with legal interest from the time of disbursement.

§ 1. The utility or necessity of the expense shall be determined, not by the result obtained, but according to the circumstances of the occasion on which they were incurred.

§ 2. The provisions of this Article apply although the gestor, being in error as to the owner of the business, gives accounts of the gestion to another person.

Art. 1340. The provisions of the preceding Article apply likewise, when the gestion seeks to prevent (*se proponha acudir a*) imminent damages (*prejuizos*), or redounds to the benefit of the owner of the business, or of the thing.

But the indemnization to the gestor shall never exceed the amount of the advantages obtained by the gestion.

Art. 1341. When anyone, in the absence of the individual obliged to provide support (*alimentos*), furnishes it for him to the person to whom it is due, he may recover its value from the debtor, although the latter does not ratify the act.

Art. 1342. The expenses of burial, incurred by a third person, in conformity with local usages and the condition of the deceased, may be recovered from the person who would be obligated to provide support for the person deceased, although the latter left no property.

Single Paragraph. The provisions of this and of the preceding Article cease upon it being proven that the gestor incurred such expenses for the simple purpose of doing good.

Art. 1343. The pure and simple ratification by the owner of the business relates back to the day of the commencement of the gestion, and produces all the effects of a mandate.

Art. 1344. If the owner of the business or of the thing disapproves the gestion, as contrary to his interests, the provisions of Arts. 1332 and 1333 shall apply, saving the provisions of Art. 1340.

Art. 1345. If the affairs (*negocios*) of another are connected with those of the gestor, in such way that they cannot be conducted (*gerir*) separately, the gestor shall be taken as the partner (*socio*) of the person whose interests he conducts (*agenciar*) in connection with his own.

Single Paragraph. In this case the person in whose behalf the gestor acted is only obligated to the extent of the advantages which he gained.

CHAPTER IX.

OF EDITION.

Art. 1346. By the contract of edition (*edição*), the editor who obligates himself to reproduce mechanically and to publish (*divulgar*) the scientific, literary, artistic or industrial work which the author entrusts to him, acquires the exclusive right to publish it and vend it (*exploral-a*).

Art. 1347. By the same contract the author may obligate himself to produce (*á feitura de*) a literary, scientific or artistic work, the publication and distribution of which is undertaken by the editor.

Art. 1348. If no term is fixed for the delivery of the work, it is understood that the author may deliver it at his own convenience; but the editor may fix a term, with the penalty of rescission of the contract.

Art. 1349. So long as the editions in which the editor has a right are not exhausted, the author cannot dispose of the work, in whole or in part.

Art. 1350. The author has the right to make such amendments and alterations as he pleases in the successive editions of his work; but if they impose extraordinary expense upon the editor, he shall have the right to indemnity.

Single Paragraph. The editor may object (*oppor-se*) to alterations which prejudice his interests, injure his reputation, or increase his responsibility.

Art. 1351. In the case of a new edition or reprint (*tiragem*), if the contracting parties cannot agree upon the manner of exercising their rights, either one of them may rescind the contract, without prejudice to the previous edition.

Art. 1352. When the last edition is exhausted, if the editor, having the right to make another, does not bring it out, the author may judicially require him to do so within a certain time, under penalty of losing that right.

Art. 1353. If, in the contract, or at the time of the contract, the author shall not have stipulated the compensation for his work, it shall be determined by arbitration.

Art. 1354. If the compensation of the author is dependent upon the success of the sale, the editor shall be obliged, like any other agency (*commissario*) to render accounts to him.

Art. 1355. The editor has the right to fix the number of copies of any edition. He cannot, however, against the will (*máu grado*) of the author, so reduce the number that the work shall not have a sufficient circulation.

Art. 1356. It is understood that the contract relates to only one edition, if the contrary does not appear expressly or implicitly from its context.

Art. 1357. The editor cannot make abbreviations, additions or modifications in the work, without permission of the author.

Art. 1358. The editor has the right to fix the price of sale, without, however, raising it to a point which restricts (*embarace*) the circulation of the work.

CHAPTER X.

OF DRAMATIC REPRESENTATION.

Art. 1359. The author of a dramatic work cannot make any alteration in its substance, without the consent of the impressario engaged in presenting it (*que a faz representar*).

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Art. 1360. If no term was fixed for the representation, the author may require the impressario to fix a term, under penalty of the rescission of the contract.

Art. 1361. The creditors of a theatrical management (*empresa de theatro*) cannot attach (*fazer penhora*) the part of the proceeds of shows reserved for the author.

Art. 1362. Without license of the author, the impressario cannot communicate the manuscript of the work to a person not connected with the theater where it is represented.

CHAPTER XI.

OF SOCIETIES.

Section I. General Dispositions.

Art. 1363. The contract of society (*sociedade*) is that entered into by persons who mutually obligate themselves to combine their efforts or resources in order to attain common ends.

Art. 1364. When civil societies conform to (*revestirem*) the forms established in the commercial laws, included among which is the law of anonymous societies, they shall obey their respective precepts, in so far as the same do not conflict with those of this Code; but they shall be inscribed in the civil register, and be subject to the civil tribunals (*e será civil o seu fôro*).

Art. 1365. If the society does not conform to any of the forms of the preceding Article, it shall be governed by the provisions of this Chapter.

Art. 1366. In questions between the members, a society shall be proven only by writing; but strangers may prove it in any manner.

Art. 1367. Societies are universal, or particular.

Art. 1368. The society is universal, when it embraces (*abranja*) either all present property (*bens*), or all future property, and either in its totality, or only that of its fruits and income (*rendimentos*).

Art. 1369. The simple agreement (*ajuste*) of universal society, without further declaration, is understood as restricted to all that each one of the associates gains in the future.

Art. 1370. The particular society only embraces the property or services especially declared in the contract.

Art. 1371. The society is also considered particular which is constituted especially to carry on (*executar*) in common a certain enterprise (*empresa*), conduct (*explorar*) a certain industry, or exercise a certain profession.

Art. 1372. The clause is void which attributes all the profits (*lucros*) to one of the members, or withdraws the social share of any of them from sharing in the losses (*prejuizos*).

Art. 1373. If the society is of all the property, the dominion and possession of the same shall become common independently of real tradition, saving the right of third persons.

Art. 1374. Where the contract is silent, the duration (*prazo*) of the society shall be indefinite, saving to each member the right to withdraw upon notice or two months prior to the close (*termo*) of the social year. If, however, the object of the society be a business or enterprise which should continue (*durar*) for a certain lapse of time, the members shall maintain the society until such business or such enterprise is concluded (*se ultimo*).

Section II. Of the Reciprocal Rights and Obligations of the Members.

Art. 1375. The obligations of the members begin immediately with the contract, if it does not fix another time, and end when, the society being dissolved, the social responsibilities are satisfied and extinguished.

Art. 1376. The contribution (*entrada imposta a*) of each member may consist of property, of its use and enjoyment, of the cession of rights, or, solely, of the prestation of services. In the silence of the contract, the contributions shall be presumed equal among themselves.

Art. 1377. If the member brings into the society a determined object of which it is evicted (*que venha a ser evicto*), he shall respond to the other members (*consocios*) as does the vendor to the purchaser.

Art. 1378. If the contribution (*entrada*) consists of fungible things, they shall, saving a declaration to the contrary, belong in common to the associates.

Art. 1379. All the profits (*lucros*) obtained by the member, in the industry which he obligated himself to exercise for the benefit of the society, belong to the social patrimony.

Art. 1380. Each member shall indemnify the society for all damages (*prejuizos*) which it may suffer through his fault (*culpa*), and he cannot set-off the same (*compensal-os*) against the profits which he may have earned for it.

Art. 1381. If the contract does not declare the share of each member in the profits and losses, it shall be understood to be proportionate, with respect to the capitalist members, to the amount which they brought in. With respect to the industrial members, the provisions of Art. 1409, Single Paragraph, will be observed.

Art. 1382. The member chosen for the administration may recover (*exigir*) of the society, besides what he may expend on its account, the amount of the obligations contracted in good faith in the management of the social business and the value of the damages he may suffer therefrom (*que lhe ella causar*).

Art. 1383. The member invested with the administration by the express text of the contract may perform (*practicar*), independently of the others, all acts, which do not exceed its normal limits, provided that he acts without deceit (*dolo*).

§ 1. The powers which he exercises shall be irrevocable during the term established, saving legitimate cause supervening.

§ 2. If they were conferred, however, after the contract, they shall be revocable the same as a simple mandate.

§ 3. The powers of the directors or administrators of societies of any kind shall also be revocable at any time, if they are not members (*socios*), although they were appointed in the respective contracts or by-laws (*estatutos*).

Art. 1384. If the administration is vested in two or more members, without discrimination as to their functions, or declaring that they shall act jointly, each one may by himself perform all acts pertaining to the administration.

Art. 1385. If it be stipulated that one of the administrators can do nothing without the others, it is understood, in the absence of subsequent agreement, that the concurrence of all is obligatory, although absent, or unable (*impossibilitados*), on the occasion, to render it, except in urgent cases, when the omission or delay of measures may occasion irreparable, or grave, injury (*damno*).

Art. 1386. In default of explicit stipulations with respect to the social management:

I. It is presumed that each member has the right to administer, and what he does is valid, even with respect to the members who do not consent, any one of whom, however, may object before the act is carried into effect.

II. Each member may make use (*servir-se*) of the things belonging to the society, provided that it be their intended use (*que lhes dê o seu destino*), that he does not use them against the social interest, nor prevent the others from making use of them, within the limits of their rights.

III. Each member may oblige the others to contribute with him to the necessary expenses of the preservation of the social property.

IV. No member can, without the consent of the others, make any alteration in the immovables of the society, although it may seem to him to be advantageous.

Art. 1387. The member who does not have the administration of the society, cannot obligate the social property.

Art. 1388. A member does not need the consent of the others in order to associate a stranger in his social share; but he cannot, without their acquiescence, associate him with the society.

Art. 1389. The member who has received in its entirety his part in an active debt of the society, shall be obliged to share it (*conferir-a*), if, because of the insolvency of the debtor, the society cannot collect the balance (*acabar de cobrar-a*).

Art. 1390. If the things, the income (*rendimento*) of which constitutes the object of the society, are not fungible, but consist of certain and determined objects (*corpos*), the risk which they run shall be to the account of the respective owners.

§ 1. If, however, they are fungible, or if, although taken care of (*guardadas*), they deteriorate, if they are intended

to circulate in commerce, or if they were transferred to the society for a determined value evidenced by an authentic inventory or balance-sheet, the risks to which they are exposed shall be to the account of the society.

§ 2. If the thing of determined value (*importancia*), as indicated in the preceding paragraph, last part, should perish, the owner can only reclaim the value declared in the inventory or balance-sheet.

Art. 1391. The members have the right to indemnity for the losses and damages, which they may suffer in their property, by reason (*com motivo*) of the social business.

Art. 1392. If there has been a participation in unlawful gains, each one of the members must make return (*repor*) of what he has received from the delinquent member, if the latter is condemned to restitution.

Art. 1393. The member who has received unlawful gains from another, knowing or being chargeable with knowledge (*devendo conhecer*) of their origin, incurs complicity, and is obligated jointly (*solidariamente*) to make restitution.

Art. 1394. All the members have the right to vote in the general meetings, in which, saving stipulation to the contrary, resolutions shall be adopted (*se deliberará*) by a majority of votes.

Section III. Of the Obligations of the Society and of the Members to Third Persons.

Art. 1395. Obligations of the society contracted jointly by all the members, or by any one of them in the exercise of the social mandate, are debts of the society.

Art. 1396. If the social capital (*cabedal*) does not cover the debts of the society, the associates shall respond for

them, in the proportion in which they have to participate in the social losses.

Single Paragraph. If one of the members is insolvent, his part of the debt shall in the same proportion be distributed among the others.

Art. 1397. The debtors of the society are not discharged by making payment to one of the members not authorized to receive it.

Art. 1398. The members are not solidarily obligated for the social debts, nor do the acts of one, not authorized, obligate the others, unless redounding to the profit of the society.

Section IV. Of the Dissolution of the Society.

Art. 1399. The society is dissolved:

I. By the fulfillment (*implemento*) of the condition to which its durability was subordinated, or by the expiration of the time established in the contract.

II. By the extinction of the social capital, or by its impairment (*desfalque*) in an amount so great that it renders it impossible to continue.

III. By the attainment (*consecução*) of the social end or by the demonstration (*verificação*) of the inability to attain it (*de sua inexecuibilidade*).

IV. By the failure (*fallencia*), incapacity, or death of one of the members.

V. By the withdrawal (*renuncia*) of any of them, if the society was for an indefinite time (Art. 110).

VI. By the unanimous consent of the associates.

Single Paragraph. Nos. II, IV and V do not apply to societies for non-economic ends.

Art. 1400. The extension (*prorogação*) of the social

term is proven only by writing, in the same conditions of the contract which fixed it (Arts. 1364 and 1366).

Art. 1401. If the society is extended after the expiration of the term of the contract, it shall be understood as constituted *de novo*; if within the term, it shall be held as a continuation of the former (*da anterior*).

Art. 1402. It is lawful to stipulate that, upon the death of one of the members, the society shall continue with his heirs, or only with the surviving members. In the second case, the heir of the deceased shall have the right to the share (*partilha*) which he had, when he died, but he shall not participate in the subsequent gains and losses, which are not a direct consequence of acts anterior to the death.

Art. 1403. If the contract stipulates that the society shall continue with the heir of the deceased member, the stipulation shall be complied with, provided that it can be; but, if the heir be a minor, the social bond shall be dissolved, as to him, in case that the judge so determines.

Art. 1404. The withdrawal (*renuncia*) of one of the members only dissolves the society (Art. 1399, no. V), when done in good faith, in opportune time, and with two months' previous notice to the members.

Art. 1405. The withdrawal is in bad faith, when the withdrawing member intends to appropriate to himself exclusively the benefits which the members intended to acquire in common; and it shall be held as inopportune, if the things are not in their integral state, or if the society might be prejudiced by the dissolution at that time.

Art. 1406. In the first case of the preceding Article, the other members have the right to at once exclude the member acting in bad faith, saving his share in the expected advantage. In the second, the society can continue, not-

withstanding the opposition of the withdrawing member, until the time of the first ordinary balance, or until the conclusion of the pending business.

Art. 1407. The social responsibility to third persons, for debts it has contracted, subsists even after the dissolution of the society.

If the solidary responsibility of the members to third persons has not been stipulated, the debt shall be distributed by them in parts proportional to their contributions (*entradas*).

Art. 1408. When the society has a prefixed duration, no member can require its dissolution before the expiration of the social term, if he does not prove some of the cases of Article 1399, nos. I to IV.

Art. 1409. The rules of distribution (*partilha*) between heirs (Arts. 1772, *et seq.*) are applicable to distribution between the members.

Single Paragraph. The industrial member, however, shall only have the right to participate in the gains of the society, without responsibility for its losses, unless stipulated to the contrary in the contract. If the contract does not determine the share of profits, it is understood that it is proportionate to the least of the contributions (*entradas*).

CHAPTER XII.

OF RURAL PARTNERSHIPS (PARCERIA).

Section I. Of Agricultural Sharing.

Art. 1410. Agricultural tenancy on shares (*parceria agricola*) is effected, when one person grants a rustic estate to another, to be cultivated by the latter, the fruits being shared between the two, in the proportion which they stipulate.

Art. 1411. The tenant (*parceiro*) who undertakes the cultivation shall not respond for the charges of the estate, if he has not assumed them.

Art. 1412. The risks of accident (*caso fortuito*), or *vis major* (*força maior*), shall be borne in common by the proprietor and the tenant.

Art. 1413. The tenancy on shares (*parceria*) does not pass to the heirs of the contracting parties, unless they left the labors of cultivation in an advanced state (*adeantados*), in which case it shall continue, so far as necessary (*quanto baste*), in order to finish the harvest.

Art. 1414. The rules of leasing (*locação*) of rustic estates are applied to this contract, in all respects not regulated in this Section.

Art. 1415. The lease on shares subsists, when the estate is alienated, the person acquiring the same (*adquirente*) being subrogated to the rights and obligations of the alienor.

Section II. Of Stock-raising on Shares (*Parceria Pecuaria*).

Art. 1416. Stock-raising on shares (*parceria pecuaria*) is effected, when animals are delivered to any one to be pastured, cared for and raised, in return for (*mediante*) a portion (*quota*) of the gains produced.

Art. 1417. The off-spring (*crias*) of the animals, and their products, as hides, hair, wool and milk, constitute the object of the sharing (*partilha*).

Art. 1418. The owner (*proprietario parceiro*) shall substitute other animals, in case of eviction, for the animals evicted.

Art. 1419. Saving agreement to the contrary, the owner shall bear the damages resulting from accident (*caso fortuito*), or *vis major* (*força maior*).

Art. 1420. The owner is entitled to the profit which may be obtained from dead animals, belonging to the capital.

Art. 1421. Saving a clause to the contrary, neither partner, without license of the other, can dispose of the cattle.

Art. 1422. The expenses of the care and raising of the animals, in the absence of agreement to the contrary, shall be to the account of the partner who is caretaker and raiser.

Art. 1423. The rules of the contract of society are applied to this contract, in so far as it is not regulated by the agreement of the parties, and, in default of agreement, by the provisions of this Section.

CHAPTER XIII.

OF THE CONSTITUTION OF INCOME (RENDA).

Art. 1424. By means of an act between living persons (*entre vivos*), or by last will, and by onerous or gratuitous title, a periodical income or prestation may be constituted, for a definite time, for the benefit of one's self or of another, by delivering a certain capital, in immovables or in money, to a person who obligates himself to satisfy it.

Art. 1425. The constitution of income in favor of a person already deceased, or who, within the following thirty days shall die of a disease (*molestia*) which he was suffering when the contract was executed, is void.

Art. 1426. The property (*bens*) given in compensation of the income passes, from the time of tradition, into the

ownership (*dominio*) of the person who is obligated for the income.

Art. 1427. If the person obligated for the income (*rendeiro, ou censuario*) fails to perform the obligation stipulated, the creditor of the income may have action against him, to require him to pay the prestations in arrears, as well as to require him to give security for the future, under penalty of the rescission of the contract.

Art. 1428. The creditor acquires the right to the income day by day, if the prestation was not to be paid in advance, at the beginning of each of the prefixed periods.

Art. 1429. When the income is constituted for the benefit of two or more persons, without determination of the part of each one, it is understood that their rights are equal; and, saving a different stipulation, the survivors do not acquire the right to the part of those who die.

Art. 1430. The income constituted upon gratuitous title may, by the act of the party instituting it (*institutor*), be exempted from all pending and future executions. This exemption exists by force of law (*de pleno direito*) in favor of montepios and alimentary pensions.

Art. 1431. The income charged upon an immovable constitutes a real right, in accordance with the provisions of Arts. 749 to 754.

CHAPTER XIV.

OF THE CONTRACT OF INSURANCE (SEGURO).

Section I. General Dispositions.

Art. 1432. The contract of insurance is that by which one of the parties obligates himself to the other, through (*mediante*) the payment of a premium (*premio*), to indemnify him for the damage (*prejuizo*) resulting from future risks, specified (*previstos*) in the contract.

Art. 1433. This contract does not obligate before it is reduced to writing, and is considered perfected from the time that the insurer (*segurador*) remits the policy to the insured (*segurado*) or makes in his books the usual entry (*lançamento*) of the operation.

Art. 1434. The policy shall specify (*consignará*) the risks assumed, the value of the object insured, the premium due or paid by the insured, and any other stipulations which may be contained (*se firmarem*) in the contract.

Art. 1435. The different species of insurance covered (*previstas*) by this Code shall be regulated by the clauses of the respective policies, which shall not be contrary to legal dispositions.

Art. 1436. This contract shall be void, when the risk which it covers is related to (*se filiar a*) unlawful acts of the insured, of the beneficiary of the insurance, or of the representatives and agents (*prepostos*) of either the one or of the other.

Art. 1437. A thing cannot be insured for more than it is worth, or for its whole value (*pelo seu todo*) more than once. It is, however, lawful for the insured to take security (*acautelar*), by means of new insurance, against the risk of the failure or insolvency of the insurer (Art. 1439).

Art. 1438. If the value of the insurance exceeds that of the thing, the insurer may, even after the delivery of the policy, require its reduction to the real value, restoring to the insured the excess of the premium; and, upon proving that the insured acted in bad faith, he shall have the right to annul the insurance, without restitution of the premium, or prejudice to the penal action which may lie in the case.

Art. 1439. Saving the provision of Art. 1437, the second insurance of the thing already insured for the same risk or

for its full value, may be annulled by either of the parties. The second insurer who was ignorant of the first contract, may, without returning the premium received, refuse (*recusar*) the payment of the object insured, or recover what he paid therefor, in excess of its real value, although he had not objected to (*reclamado*) the contract before the loss (*sinistro*).

Art. 1440. The human life and faculties are also esteemed as insurable objects and may be insured, at an agreed valuation, against possible risks, such as involuntary death, inability to work, and other similar kinds.

Single Paragraph. Death received in a duel, as well as premeditated suicide by a person in his right mind (*em seu juizio*), is considered as voluntary death.

Art. 1441. In the case of insurance upon the life, the parties are free to fix the respective value, and to take out more than one insurance, in the same or different value, without prejudice to previous insurance.

Art. 1442. The parties are also free to fix between themselves the rate of premium. However, insurance taken in a society or company which has a tariff (*tabella*) of premiums, is presumed to be proposed and accepted in accordance with it.

Art. 1443. The insured and the insurer are obliged to observe the strictest good faith and veracity in the contract, both with respect to its object, and to the circumstances and declarations concerning it.

Art. 1444. If the insured does not make true and complete declarations, but omits circumstances which may influence the acceptance of the proposal or the rate of the premium, he shall lose the right to the amount of the insurance, and shall pay the premium due (*vencido*).

Art. 1445. When the insured contracts the insurance through a broker (*mediante procurador*), the latter also becomes responsible to the insurer for the inaccuracies, or omissions (*lacunas*), which may influence the contract.

Art. 1446. The insurer, who, at the time of the contract, knows that the risk, against which the insured seeks to be protected, has passed, and notwithstanding, issues the policy (*apolice*), shall pay double the stipulated premium.

Art. 1447. Policies may be issued in the name of the insured (*nominativas*), to order, or to the bearer. Policies of life insurance cannot be to bearer.

Single Paragraph. Nominative policies shall state the name of the insurer, of the insured, and of his representative, if any, or that of the third person in whose name the insurance is taken.

Art. 1448. The policy shall also declare the beginning and the end of the risks by year, month, day and hour.

§ 1. In default of precise stipulation, the time will be counted in accordance with Art. 125.

§ 2. With respect to things which are intended for transportation from one point to another, the risks shall begin to run from the time they are received at the first place, and shall terminate when delivered to the consignee at the second.

Section II. Of the Obligations of the Insured.

Art. 1449. Saving agreement to the contrary, the insured shall pay the stipulated premium in the act of receiving the policy.

Art. 1450. The insured is presumed obliged to pay the legal interest on the premium in arrears, independently of

the demand (*interpelação*) of the insurer, if the policy or the by-laws do not prescribe a higher rate.

Art. 1451. If the insured should fail, or be declared interdict, while in arrears of premiums, or should become in arrears after the interdiction, or the failure, the insurer shall be exempt from responsibility for the risks, if the estate (*massa*), or the representative of the interdict does not pay the premiums in arrears before the happening of the loss (*antes do sinistro*).

Art. 1452. The fact that the risk in protection against which the insurance was taken, was not verified, does not exempt the insured from paying the stipulated premium; the special dispositions of the maritime law will be observed with respect to average (*estorno*).

Art. 1453. Although the risks become increased beyond what is was possible to foresee in the contract, the insurer has not the right, for such reason, to increase the premium, unless there is an express clause in the contract.

Art. 1454. So long as the contract is in force, the insured shall refrain from everything that may increase the risks, or may be contrary to the terms stipulated, under penalty of losing the right to the insurance.

Art. 1455. Under the same penalty of the preceding Article, the insured shall communicate to the insurer every incident which may in any way aggravate the risk.

Art. 1456. In the application of the penalty of Art. 1454, the judge shall proceed with equity, considering the real circumstances, and not unfounded probabilities, with respect to the aggravation of risks.

Art. 1457. Upon the happening of the loss (*verificado o sinistro*), the insured, as soon as he knows of it, shall communicate it to the insurer.

Single Paragraph. Unjustified omission so to do relieves the insurer, if he proves that, if he had been opportunely advised, it would have been possible for him to have avoided, or decreased, the consequences of the disaster (*sinistro*).

Section III. Of the Obligations of the Insurer.

Art. 1458. The insurer is obliged to pay in money the loss (*prejuizo*) resulting from the risk assumed, and, according to circumstances, the total value of the thing insured.

Art. 1459. It shall always be presumed that the insurer has not obligated himself to indemnify losses resulting from the inherent vice of the thing insured.

Art. 1460. When the policy limits or particularizes the risks of the insurance, the insurer shall not respond for others.

Art. 1461. Saving express restriction in the policy, the risk of the insurance shall embrace all resulting or consequent damages, such as the injuries (*estragos*) occasioned in order to avert the disaster, to lessen the damage, or save the thing.

Art. 1462. When the object of the insurance is given a determined value, and the insurance is taken for this value, the insurer is obligated, in the case of total loss, to pay the amount of the indemnization for the agreed value, without losing thereby the right secured to him by Arts. 1438 and 1439.

Art. 1463. The right to the indemnization may be transmitted to a third person as an accessory of the property, or of the real right upon the thing insured.

Single Paragraph. Such transmission operates by force of law (*de pleno direito*) with respect to the thing mort-

gaged, or pledged, and, besides these cases, when the policy does not forbid it.

Art. 1464. In the event of loss (*sinistro*), the insurer may oppose to the successor or representative of the insured all the means of defense which he would have against the latter.

Art. 1465. If the insurer should fail before the risk is past, the insured may refuse the payment to him of the premiums in arrears, and take other insurance for the whole value.

Section IV. Of Mutual Insurance.

Art. 1466. Insurance may be effected (*ajustar-se*) by a certain number of persons insured (*segurados*) sharing (*pondo*) in common among themselves the loss, which any of them may suffer, from the risk run by all.

In such case the whole number (*conjuncto*) of the insured constitute a juridical person, to which pertain the functions of an insurer.

Art. 1467. In this form of insurance, instead of premiums, the persons insured contribute with the quotas necessary to cover the expenses of administration and the losses suffered. In default of by-laws, it is presumed that the rate of the quotas shall be determined according to the accounts of the year.

Art. 1468. It shall also be permitted to obligate the insured to fixed premiums, they being bound (*adstrictos*), however, in the event that the amount of the fixed premiums does not cover the losses sustained (*riscos verificados*), to make up the difference by assessed quotas (*a quotizarem-se pela differencia*).

If, on the contrary, the amount of the premiums exceeds the losses sustained, the associates may share the excess

among themselves as a dividend, if they do not prefer to create a reserve fund.

Art. 1469. The supplementary assessments (*entradas*) and the dividends shall be proportional to the quotas of each associate.

Art. 1470. The quotas of the members shall be fixed in accordance with the value of the respective insurances, and different risks may be carried in account, the same being established in two or more categories.

Section V. Of Life Insurance.

Art. 1471. Life insurance has for its object to guarantee, for the annual premium which is agreed, the payment of a certain sum to a determined person or persons, upon the death of the insured; it may likewise be stipulated for the payment of such sum to the insured himself, or to a third person, if the insured survives the term of his contract.

Single Paragraph. When the payment (*liquidação*) is only to be made in case of death, the premium may be stipulated for a limited time or for the entire life of the insured; it being lawful for the contracting parties, during the time the contract is in force, to substitute, by common consent, one plan for the other, upon making settlement of the premiums required by the substitution.

Art. 1472. A person may take insurance upon his own life, or upon that of another, upon showing, in the latter case, his interest in the preservation of the life which he insures, under penalty of the insurance not being valid if the motive alleged is proven to be false.

Single Paragraph. Such proof of interest is not required, if the third person whose life it is desired to insure, is the descendant, ascendant, brother or sister or spouse of the applicant (*proponente*).

Art. 1473. If the declared purpose of the insurance is not the guaranty of some obligation, it is lawful for the insured, at any time, to substitute his beneficiary, and if the policy is issued to order, to institute the beneficiary even by his last will. In this case, in default of declaration, the insurance shall be paid to the heirs of the insured, notwithstanding any provisions to the contrary of the by-laws of the company or association.

Art. 1474. A person who is legally prohibited from receiving the donation of the insured, cannot be instituted as beneficiary.

Art. 1475. The sum stipulated as benefit is not subject to the obligations or debts of the insured.

Art. 1476. It is also lawful to make the insurance in such way that the insured will only have a right to it if he arrives at a certain age or is alive at a certain time.

CHAPTER XV.

OF GAMING AND OF BETTING.

Art. 1477. Gaming or betting debts do not create any obligation of (*não obrigam a*) payment; but the amount which has been voluntarily paid can not be recovered, unless it was won by deceit (*dolo*), or unless the loser is a minor, or under interdict.

Single Paragraph. This provision applies to any contract which covers or involves the acknowledgement, novation, or security (*fiança*) of gaming debts; but the resulting nullity cannot be pleaded against a third person in good faith.

Art. 1478. Reimbursement cannot be enforced for anything which was loaned for gaming or betting, in the act of betting or gaming.

Art. 1479. Contracts concerning operations of stock exchanges (*titulos de bolsa*), merchandise or securities (*valores*), in which settlement is stipulated exclusively for the difference between the agreed price and the quotation price at the time the settlement is made (*no vencimento do ajuste*), are simulated to gaming, and are subject, as such, to the provisions of the preceding Articles.

Art. 1480. Drawings (*o sorteio*), for the settlement of disputes, or to divide things in common, shall be considered as a system of partition, or a mode of compromise settlement (*transacção*), according to the case.

CHAPTER XVI.

OF SURETY (FIANÇA).

Section I. General Provisions.

Art. 1481. The contract of surety (*fiança*) takes place, when one person obligates himself for another, to the latter's creditor, to satisfy the obligation in the event that the debtor does not perform it.

Art. 1482. If the surety (*fiador*) has someone who guarantees his solvency (*lhe abone a solvencia*), the provisions of this Chapter, in regard to surety (*fiança*), shall be applied to the guarantor (*abonador*).

Art. 1483. The security (*fiança*) shall be given in writing, and does not admit an extensive interpretation.

Art. 1484. The security may be stipulated even without the consent of the debtor.

Art. 1485. Future debts may be the object of security; but the surety, in this case, shall not be sued until after the obligation of the principal debtor is made certain and liquidated (*liquida*).

Art. 1486. If the security is not limited, it shall cover (*comprenderá*) all the accessories of the principal debt, including judicial expenses, from the citation of the surety.

Art. 1487. The security may be in a value less than the principal obligation and contracted upon less onerous conditions.

When it exceeds the value of the debt, or is more onerous than it, it will not be valid except to the limit of the obligation secured.

Art. 1488. Void obligations are not susceptible of security, unless the nullity results merely from the personal incapacity of the debtor.

Single Paragraph. This exception does not embrace the case of Art. 1259.

Art. 1489. When any one has to give a surety, the creditor cannot be obliged to accept him, unless he is a suitable (*idoneo*) person, domiciled in the Municipality where he is to give the security, and possesses property sufficient for the discharge of the obligation.

Art. 1490. If the surety should become insolvent or incapable, the creditor may require that he be substituted.

Section II. Of the Effects of Surety.

Art. 1491. The surety who is sued for the payment of the debt has the right to require, up to the time the suit is answered, that execution be first had of the property of the debtor.

Single Paragraph. The surety who pleads the benefit of order (*beneficio de orden*) to which this Article refers, must name property of the debtor, situated in the same Municipality, free and unincumbered, and sufficient to satisfy the debt (Art. 1504).

Art. 1492. This benefit does not avail the surety :

I. If he has expressly renounced it.

II. If he obligated himself as principal payor, or joint debtor (*solidario*).

III. If the debtor is insolvent, or bankrupt (*fallido*).

Art. 1493. Security (*fiança*) jointly given for a single debt by more than one person, implies a joint undertaking (*compromisso de solidariedade*) between them, unless they expressly reserve the benefit of division.

Single Paragraph. If this benefit is stipulated, each surety (*fiador*) responds only for the part which, in proportion, corresponds to him to pay.

Art. 1494. Each surety may also fix (*taxar*), in the contract, the part of the debt for which he assumes responsibility, and, in that case, he will not be obligated for more.

Art. 1495. The surety who pays the debt in full, is subrogated to the rights of the creditor; but he can only sue each one of the other sureties for his respective quota.

Single Paragraph. The part of an insolvent surety shall be distributed among the others.

Art. 1496. The debtor responds also to the surety for all the losses and damages which the latter pays, and for those which he may suffer by reason of the security (*fiança*).

Art. 1497. The surety is entitled to interest upon the reimbursement at the rate stipulated in the principal obligation, and if no rate is agreed upon, to the legal rate of interest.

Art. 1498. When the creditor, without just cause, delays the execution begun against the debtor, the surety, or the guarantor (Art. 1482), may require him to proceed.

Art. 1499. The surety, even before having paid, may require the debtor to satisfy the obligation, or to relieve him

from the security, from the time that the debt becomes demandable, or the period has expired within which the debtor obligated himself to relieve him (*desonerar-o*).

Art. 1500. The surety may release himself from the security (*fiança*) which he has signed without limit of time, whenever he wishes to do so (*lhe convier*), but he remains obligated, however, for all the effects of the security previous to the friendly act, or to the sentence, which releases him.

Art. 1501. The obligation of the surety passes to his heirs; but the responsibility of the security (*fiança*) is limited to the time which has run up to the death of the surety (*fiador*), and cannot exceed the assets of the estate (*ultrapassar as forças da herança*).

Section III. Of the Extinction of the Security.

Art. 1502. The surety may plead against the creditor the defenses (*excepções*) which are personal to him, and those which go to extinguish the obligation, which pertain to the principal debtor, if they do not arise simply from personal incapacity, except in the case of Art. 1259.

Art. 1503. The surety, although joint (*solidario*) with the principal debtor (Arts. 1492 and 1493), will be released (*desobrigado*):

I. If, without his consent, the creditor grants delay to the debtor.

II. If, by act of the creditor, subrogation to his rights and preferences becomes impossible.

III. If the creditor, in payment of the debt, accepts amicably from the debtor an object different from that which the latter was obligated to give him, although he afterwards loses it by eviction.

Art. 1504. If, after making the designation as provided in Art. 1491, Single Paragraph, the debtor becomes insolvent during the delay in execution, the surety will be discharged, upon his making proof that the property indicated by him was, at the time of the levy (*penhora*), sufficient for the satisfaction of the debt secured.

TITLE VI.

Of Obligations By Unilateral Declaration of Will.

CHAPTER I.

OF TITLES TO BEARER.

Art. 1505. The holder of a security payable to bearer (*o detentor de um titulo ao portador*), when authorized to dispose of it, may demand the due performance (*prestação devida*) by the signer or person by whom it is issued (*emissor*). The signer or issuer, however, may discharge himself by paying to any holder (*detentor*), whether or not authorized to dispose of the security (*titulo*).

Art. 1506. The obligation of the issuer subsists, although the security has gotten into circulation against his will.

Art. 1507. The signer or issuer cannot interpose, against the bearer in good faith, any defense other than that which is based upon the internal or external nullity of the title, or upon a personal right of the issuer or signer against the bearer.

Art. 1508. The signer or issuer shall not be bound to pay except upon the presentation (*vista*) of the title, unless the same should be declared void.

Art. 1509. A person who is wrongfully dispossessed of titles to bearer, can only by judicial intervention prevent

the payment of the amount of the principal, or of the interest, to the unlawful holder (*illegítimo detentor*).

Single Paragraph. If, after summons of the holder of such titles, they are not presented within three years from that date, the judge may declare them of no effect (*caducos*), ordering the debtor to execute others in substitution of those demanded.

Art. 1510. If the title, bearing the name of the creditor, contains (*trouzer*) a clause that payment may be made (*de poder ser paga a prestação*) to the bearer, upon making payment to (*embolsando*) the latter, the debtor will validly discharge himself; but he may require him to prove his right or give a bond.

The person whose name is written in the title is presumed to be the owner, and can reclaim it from any one who wrongfully detains it.

Art. 1511. The title, in which the signer or issuer obligates himself, without authorization of Federal law, to pay to the bearer a certain amount of money, is void.

Single Paragraph. This provision does not apply to the obligations issued by the States or Municipalities, which shall continue to be governed by a special law.

CHAPTER II.

OF THE PROMISE OF REWARD.

Art. 1512. Any person who, by public advertisements, offers (*se comprometter*) to reward, or gratify, whoever may fulfill a certain condition, or perform a certain service, contracts an obligation to do what he has promised.

Art. 1513. Whoever, in the terms of the preceding Article, does the said service, or satisfies the said condition, although not induced by reason of the promise (*não pelo interesse da promessa*), may demand the stipulated reward.

Art. 1514. Before the performance of the service or the fulfillment of the condition, the promisor may revoke the promise, provided that he does so with the same publicity.

If, however, he had designated a stated time for the performance of the act (*execução da tarefa*), it shall be understood that he waives the right (*renuncia o arbitrio*) to withdraw the offer during such time.

Art. 1515. If the act contemplated in the promise is performed by more than one individual, the one who first performed it shall have the right to the reward.

§ 1. If the performance is simultaneous, each one shall be entitled to an equal share in the reward.

§ 2. If the reward is not divisible, it shall be awarded by lot.

Art. 1516. In competitions (*concursos*) which are opened by public promise of reward (*recompensa*), the fixing of a stated time (*prazo*) is an essential condition of its validity (*para valerem*), as is also the observation of the provisions of the following paragraphs:

§ 1. The decision of the person named in the announcements as judge, binds the interested parties.

§ 2. In default of any person designated to judge the merits of the works which may be presented, it shall be understood that the promisor reserves to himself that function.

§ 3. If the works have equal merit, the provisions of the preceding Article shall be observed.

Art. 1517. The successful works (*obras premiadas*), in competitions within the preceding Article, shall only become the property of the promisor, if so stipulated in a clause in the publication of the promise.

TITLE VII.**Of Obligations for Illicit Acts.**

Art. 1518. The property of a person responsible for the offense or violation of the right of another, is subject to the reparation of the damage caused; and if there is more than one author of the offense, all shall respond solidarily for the reparation.

Single Paragraph. Accomplices, and the persons designated in Art. 1521, are solidarily responsible with the authors.

Art. 1519. If the owner of the thing, in the case of Art. 160, No. II, is not to blame (*culpado*) for the danger, he shall be entitled to indemnization for the damage (*prejuizo*) which he suffers.

Art. 1520. If the danger occurred through the fault of a third person, in the case of Art. 160, No. II, the author of the damage shall have a regressive action against the former to recover the amount which he has had to pay (*que tiver resarcido*) to the owner of the thing.

Single Paragraph. The same action shall lie against the person in defense of whom the thing was damaged (Art. 160, No. I).

Art. 1521. Also responsible for civil reparation, are :

I. Parents (*os paes*), for their minor children who were under their power or in their company.

II. Tutors or curators, for their pupils and wards, who were in the same conditions.

III. The patron, master, or principal (*committente*), for his employes, servants (*serviçaes*) and agents (*pre-postos*), in the exercise of the work entrusted to them (*que lhes competir*), or on account of the same (Art. 1522).

IV. The owners of hotels, guest-houses (*hospedarias*), houses or establishments where lodging is furnished (*onde se albergue*) for money, even for purposes of education, for their guests, dwellers, and scholars.

V. Those who have gratuitously participated in the proceeds of a crime, up to a corresponding amount (*até á concorrente quantia*).

Art. 1522. The responsibility established in the preceding Article, No. III, embraces juridical persons, who are engaged in industrial enterprises (*que exercerem exploração industrial*).

Art. 1523. With the exception of those of Art. 1521, no. V, the persons enumerated in this Article and in Art. 1522, shall be responsible only upon proof that they contributed (*concorreram*) to the damage by fault (*por culpa*), or negligence on their part.

Art. 1524. A person who makes good (*resarcir*) the damage caused by another, if the latter is not his descendant, may recover what he has paid, from the person for whom he has paid.

Art. 1525. Civil responsibility is independent of the criminal responsibility, but there can be no further question, however, as to the existence of the fact, or as to who was the author of it, when these questions have been decided in the criminal action (*no crime*).

Art. 1526. The right to demand reparation, and the obligation to make it (*prestar-a*), are transmitted with the inheritance, except in the cases which this Code excludes.

Art. 1527. The owner, or keeper (*detentor*), of an animal shall make good (*resarcirá*) the damage caused by it, unless he proves:

I. That he kept and watched it with precise care.

II. That the animal was provoked by another.

III. That the person injured acted imprudently (*que houver imprudencia do offendido*).

IV. That the fact resulted from accident (*caso fortuito*), or *vis major*.

Art. 1528. The owner of a building or structure is responsible for the damages which result from its ruinous condition (*da sua ruina*), if this arises from lack of repairs, the necessity for which was manifest.

Art. 1529. The person who inhabits a house, or a part of it, is responsible for the damage arising from things which fall from it or are thrown into an improper place (*lançadas em logar indevido*).

Art. 1530. The creditor who sues the debtor before the debt is due, except in the cases in which the law permits it, shall be obliged to wait the time remaining until the same becomes due, to deduct (*descontar*) the corresponding interest, although stipulated, and to pay the costs in double amount.

Art. 1531. The person who sues for a debt already paid, in whole or in part, without allowance (*resalvar*) for the amounts received, or demands more than is due, shall be obliged to pay to the debtor, in the first case, the double of the amount collected, and, in the second case, the equivalent of what he demands from him, unless by reason of his right being prescribed, he dismisses his action (*decair da acção*).

Art. 1532. The penalties of Arts. 1530 and 1531 will not be applied, when the plaintiff (*autor*) desists from his action before answer to the suit.

TITLE VIII.**Of the Liquidation of Obligations.****CHAPTER I.****GENERAL PROVISIONS.**

Art. 1533. An obligation certain is considered liquid (*liquida*), with respect to its existence, and determined, with respect to its object.

Art. 1534. When the debtor cannot make performance (*cumprir a prestação*) in kind as stipulated (*na especie ajustada*), he shall substitute for it its value in current money, in the place where the obligation is executed.

Art. 1535. Before judicial execution of obligations to do, or not to do, and in general, of indemnity for losses and damages, shall proceed, the liquidation of the amount shall be determined in all cases where it is not fixed by law or by the agreement of the parties.

Art. 1536. To liquidate the amount of a prestation not performed, which has official value in the place of execution, the average of the price, or of the rate (*taxa*), between the date when it is due and that of payment, will be taken, adding interest for the delay.

§ 1. In all other cases, the liquidation shall be made by arbitration.

§ 2. In unliquidated obligations, the interest for delay is counted from the initial citation.

CHAPTER II.

OF THE LIQUIDATION OF OBLIGATIONS ARISING FROM
ILLICIT ACTS.

Art. 1537. The indemnization, in the case of homicide, consists:

I. Of the payment of the expenses of the treatment of the victim, his funeral, and the mourning outfit (*luto*) of his family.

II. In the furnishing (*prestação*) of support (*alimentos*) to the persons to whom the deceased owed it.

Art. 1538. In the case of wounding or other injury (*offensa*) to health, the offender shall indemnify the offended for the expenses of treatment and for lost profits (*lucros cessantes*) until the end of his recovery, besides paying him the amount of the fine in the medium grade of the corresponding criminal penalty.

§ 1. This sum shall be doubled if maiming or deformity results from the wounding.

§ 2. If the injured person, maimed or deformed, is an unmarried woman or widow, yet capable of marriage, the indemnization shall consist in giving her a dowry (*dotal-a*), according to the ability of the offender, the circumstances of the injured person, and the gravity of the defect.

Art. 1539. If from the injury a defect results by reason of which the injured person cannot exercise his trade or profession, or the value of his work is diminished, the indemnization, besides the expenses of treatment and lost gains up to the time of his recovery, shall include a pension corresponding to the amount of the work, for which he was incapacitated, or of the depreciation which he suffered.

Art. 1540. The preceding provisions are applied even to the case in which the death, or injury (*lesão*) results from an act considered a justifiable crime, if it was not perpetrated by the offender in repelling the aggression of the injured person.

Art. 1541. In the case of wrongful taking (*usurpação*), or dispossessing of another, the indemnization shall consist of restoring the thing, together with the value of its deterioration, or, if none, in reimbursing its equivalent to the injured person (Art. 1543).

Art. 1542. If the thing is in the possession of a third person, the latter shall be obliged to deliver it, and the property of the delinquent is liable for the indemnization.

Art. 1543. For making restitution of the equivalent, when the thing itself does not exist (Art. 1541), it will be valued at its ordinary price and by its value of affection, provided that the latter does not exceed (*avantaje*) the former.

Art. 1544. Besides ordinary interest, counted proportionally to the value of the damage, and from the time of the crime, the satisfaction comprises compound interest.

Art. 1545. Physicians, surgeons, pharmacists, midwives, and dentists are obliged to satisfy damages, whenever death, disability for service, or wounding results from imprudence, negligence, or want of skill (*impericia*), in professional acts.

Art. 1546. The pharmacist responds solidarily for the errors and mistakes (*enganos*) of his clerk (*preposto*).

Art. 1547. The indemnization for libel or slander (*injuria ou calumnia*) shall consist in the reparation of the injury which thereby results to the person offended.

Single Paragraph. If he cannot prove material damage

(*prejuizo*), the offender shall pay him double the fine in the maximum grade of the respective criminal penalty (Art. 1550).

Art. 1548. The woman aggrieved in her honor has the right to require of the offender, if he cannot or will not repair the wrong by marriage, a dowry corresponding to her own condition and state:

I. If, being a virgin and minor, she is deflowered.

II. If, being a virtuous woman, she was violated, or terrified by threats.

III. If she were seduced under promise of marriage.

IV. If she were raped.

Art. 1549. In all other crimes of sexual violence or of outrage to modesty (*pudor*), the indemnization shall be judicially determined.

Art. 1550. The indemnization for offenses to personal liberty shall consist in the payment of the losses and damages suffered by the injured person, and in a sum calculated in the terms of the Single Paragraph of Art. 1547.

Art. 1551. As offensive to personal liberty (Art. 1550), are considered:

I. Private prison (*carcere*).

II. Imprisonment (*prisão*) through false complaint or denouncement, or made in bad faith.

III. Illegal imprisonment (Art. 1552).

Art. 1552. In the case of the preceding Article, no. III, only the authority who ordered the imprisonment is obliged to make good the damages.

Art. 1553. In cases not foreseen in this Chapter, the indemnization shall be fixed by arbitrament.

TITLE IX.**Of Creditors' Meetings (Concurso de Credores).***Of Preferences and Creditory Liens (Privilegios).*

Art. 1554. Creditors meetings (*concurso de credores*) may be held whenever the debts exceed the amount of the property of the debtor.

Art. 1555. The discussion between the creditors may relate either to the preferences in dispute between them, or to the nullity, simulation, fraud, or falsity of the debts and contracts.

Art. 1556. If no one has legal title to preference, the creditors shall have equal rights in the property of the common debtor.

Art. 1557. The legal titles to preference are liens and real rights.

Art. 1558. The hypothecary or lien creditors preserve their respective rights:

I. Upon the price of the insurance of the thing charged with mortgage or lien (*privilegio*), or upon the indemnity due if some one is responsible for the loss or damage (*damnificação*) of the thing.

II. Upon the value of the indemnity, if the thing charged with mortgage or lien is disappropriated, or subjected to a legal servitude.

Art. 1559. In these cases, the debtor of the price of the insurance, or of the indemnity, discharges himself by paying without opposition of the mortgage or lien creditors.

Art. 1560. The real credit has preference over the personal of whatever kind, with the exception established in the Single Paragraph of Art. 759; the personal credit with

a lien is preferred over the simple credit, and the special lien over the general.

Art. 1561. The preference resulting from mortgage, pledge and other real rights (Art. 674), shall be determined in accordance with the provisions of the preceding Book.

Art. 1562. When two or more creditors of the same class have special liens (*especialmente privilegiados*), and with equal titles, upon the same property (*concorrerem aos mesmos bens*), they shall be prorated in proportion to the value of the respective credits, if the proceeds are not sufficient for the full payment of them all.

Art. 1563. Liens,—with the exception of that one referred to in the Single Paragraph of Art. 759,—relate (*se referem*) only:

I. To the movable property of the debtor, not subject to the real right of another.

II. To unmortgaged immovables.

III. To the balance (*saldo*) of the price of property subject to pledge or mortgage, after payment of the respective creditors.

IV. To the value of the insurance and of the disappropriation.

Art. 1564. From the price of the mortgaged immovable there shall be deducted, however, the judicial costs of the execution against it, as well as the expenses of its conservation by a third person, by agreement of the debtor and creditor, after the constitution of the mortgage.

Art. 1565. The special lien only includes property subject, by express provision of law, to the payment of the credit which it secures (*que elle favorece*); and the general, all property not subject to real credit, nor to special lien.

Art. 1566. The following have a special lien:

I. The creditor for judicial costs and expenses incurred in the collection and liquidation, upon the thing collected and liquidated.

II. The creditor for expenses of salvage, upon the thing salvaged.

III. The creditor for necessary or useful benefits, upon the thing benefited.

IV. The creditor for materials, money, or services in building, reconstruction or improvement, upon the rustic or urban estates, factories, offices, or any other constructions.

V. The creditor for seeds, instruments, and services in cultivation, or in the harvest, upon the agricultural produce (*frutos agricolas*).

VI. The creditor for rent-money (*alugueres*), for the amounts due (*prestações*) for the current and preceding year, upon the furnishings (*alfaias*) and utensils in rustic or urban estates.

VII. The author of a work, or his legitimate representatives, upon the copies of the same existing in the estate (*massa*) of the editor, for a credit created (*fundado*) against the latter in the contract of publication (*de edição*).

VIII. The agricultural laborer, for the debt due for his wages (Art. 759, Single Paragraph), upon the product of the crop to which he has contributed by his labor, and with preference (*precipuamente a*) over any other credits.

Art. 1567. The lien established in the preceding Article, No. V, ceases when the fruits are reduced to another kind (*especie*), or sold after being harvested.

Art. 1568. Where there are, at the same time, creditors entitled to the lien of Art. 1566, no. III, and to that of this Article, no. IV, the provisions of Art. 1562 will be applied to them.

Art. 1569. A general lien upon the property of the debtor, in the following order, is enjoyed by :

I. The credit for the funeral expenses, conducted without pomp, according to the condition of the deceased and the custom of the place.

II. The credit for judicial costs, or for expenses of the collection and liquidation of the estate (*massa*).

III. The credit for the expenses of the mourning of the surviving spouse and of the children of the deceased debtor, if the same are moderate.

IV. The credit for the expenses of the illness of which the deceased died, for the six months prior to his death.

V. The credit for the necessary costs of the maintenance of the deceased debtor and his family, for three months prior to his death.

VI. The credit for the taxes (*impostos*) due to the Public Treasury for the current year and for the preceding year.

VII. The credit for the wages of servants and other persons of domestic service of the debtor, in his last months of life.

Art. 1570. In the remuneration of Art. 1569, no. VII, is included that of the teachers (*mestres*) who, during the same period, taught the minor descendants of the deceased.

Art. 1571. The Federal Treasury has preference over that of the State, and the latter over the Municipal.

BOOK IV. OF THE RIGHT OF SUCCESSIONS

TITLE I.

Of Succession in General.

CHAPTER I.

GENERAL PROVISIONS.

Art. 1572. The succession being opened, the ownership (*dominio*) and the possession of the estate (*herança*) is transmitted, immediately, to the legitimate and testamentary heirs.

Art. 1573. Succession is given by disposition of last will, or by virtue of law.

Art. 1574. Where a person dies without a will, the estate is transmitted to his legitimate heirs. The same occurs with respect to the property not included in the will.

Art. 1575. The legitimate succession also takes place if the will is without effect (*caducar*), or is adjudged void.

Art. 1576. If there are necessary heirs, the testator can only dispose of half of the estate.

Art. 1577. The capacity to succeed is of the time of the opening of the succession, which shall be regulated according to the law then in force.

CHAPTER II.

OF THE TRANSMISSION OF THE ESTATE.

Art. 1578. The succession is opened in the place of the last domicile of the deceased.

Art. 1579. Where the marriage was celebrated under the regimen of community of property, the surviving spouse has the right to continue, until the partition, in possession of the estate, with the duty of head of the household (*casal*).

§ 1. If, however, the surviving spouse is a woman, it will be necessary (*mistér*), for this purpose, that she should have been living with her husband, at the time of his death.

§ 2. If there is no surviving spouse, the appointment of the maker of the inventory (*inventariante*) will be made by the co-heir who is in the corporal possession and administration of the property. Among co-heirs, the preference will be regulated by their fitness (*idoneidade*).

§ 3. In default of spouse and of heirs, the executor (*testamenteiro*) will make the inventory.

Art. 1580. Where two or more persons are called simultaneously to an inheritance (*herança*), their right, with respect to the possession and ownership, shall be indivisible until the partition is completed (*se ultimar*).

Single Paragraph. Either of the co-heirs may recover the universality of the estate from a third person who is wrongfully in possession of it, and the latter cannot oppose against him, as a defense, his partial right to the property of the succession.

CHAPTER III.

OF THE ACCEPTANCE AND RENUNCIATION OF THE INHERITANCE.

Art. 1581. The acceptance of the inheritance may be express or tacit; the renunciation, however, must be evidenced (*constar*) by notarial act (*escriptura publica*) or by judicial record (*termo*).

§ 1. The acceptance is express when it is made by writ-

ten declaration ; tacit, when it results from acts compatible only with the character of heirship.

§ 2. Acceptance of the inheritance is not expressed by officious acts, as the funeral of the deceased, or by those merely conservatory, or those of administration and *adinterim* safe-keeping (*guarda*).

Art. 1582. Nor likewise does the gratuitous assignment (*cessão*), pure and simple, of the estate to the other co-heirs, imply acceptance.

Art. 1583. The inheritance cannot be accepted or renounced in part, upon condition, or on time (*a termo*) ; but the heir, to whom legacies are left by will (*se testaram*), may accept them, renouncing the inheritance, or accept it, repudiating them.

Art. 1584. The person interested in having the heir declare whether he accepts or not the inheritance, may, twenty days after the succession is opened, require of the judge a reasonable time, not greater than thirty days, within which the heir must announce his choice, under penalty of being held to have accepted the inheritance.

Art. 1585. If the heir dies before he has declared whether he accepts the inheritance, the right of acceptance passes to his heirs, unless in case of institution limited (*adstricta*) by a suspensive condition not yet fulfilled (*verificada*).

Art. 1586. When the heir prejudices his creditors by renouncing the inheritance, they may accept it in the name of the renouncing heir, with the authorization of the judge.

In this case, and after the payment of the debts of the renouncing heir, the remainder shall be returned to the other heirs.

Art. 1587. The heir is not liable (*não responde*) for

charges greater than the value (*forças*) of the inheritance; he must, however, make proof of the excess, unless there is an inventory, which excuses it, showing the value of the property inherited.

Art. 1588. No one can succeed, representing the renouncing heir. If, however, he is the only legitimate heir of his class, or if all the others of the same class renounce the inheritance, their children may come into the succession in their own right, and per capita (*e por cabeça*).

Art. 1589. In cases of legitimate succession, the part of the renouncing heir accretes to that of the others of the same class, and if he is the only one of the class, it devolves to those of the subsequent class.

Art. 1590. The renunciation may be retracted, when it was made through violence, error or deceit (*dolo*), after hearing the interested parties. The acceptance may be retracted, if prejudice does not result to the creditors, they having the right, in the contrary case, to avail themselves of the provisions of Art. 1586.

CHAPTER IV.

OF VACANT ESTATES (HERANÇA JACENTE).

Art. 1591. If there is no will, the estate is vacant (*jacente*), and shall remain under the keeping, conservation and administration of a curator:

I. If the deceased left no spouse, nor descendant or ascendant heir, nor collateral capable of succession (*successível*), notoriously known.

II. If the heirs, descendants or ascendants, renounce the inheritance, and there is no spouse, or collateral capable of succession, notoriously known.

Art. 1592. If there is a will, the provisions of the preceding Article will be observed :

I. If the deceased left no spouse, nor descendant or ascendant heirs.

II. If the heir named does not exist, or does not accept the inheritance.

III. If, in any of the cases foreseen in the two preceding numbers, there is no collateral capable of succession, notoriously known.

IV. If, in the event of any of the cases of the three preceding numbers, there is no executor appointed, or the one named does not exist, or does not accept the office (*testamentaria*).

Art. 1593. The property of the jacent estate shall be declared vacant if, after all the legal proceedings have been observed, no heirs have appeared.

Single Paragraph. This declaration shall not be made until one year after the inventory has been concluded.

Art. 1594. The declaration of the vacancy of the inheritance shall not prejudice the heirs who legally prove their rights (*se habilitarem*) ; but, at the expiration of thirty years from the opening of the succession, the property collected shall pass to the ownership (*dominio*) of the State, or of the Federal District, if the former owner (*de cujus*) had been domiciled in the respective jurisdictions (*circumscripções*), or shall be incorporated into the ownership of the Union, if he had been domiciled in territory not yet constituted into a State.

CHAPTER V.

OF THOSE WHO CANNOT SUCCEED.

Art. 1595. The heirs or legatees are excluded from the inheritance (Arts. 1708, no. IV and 1741 to 1745) :

I. Who have been authors or accomplices in the crime of voluntary homicide, or attempt at it, against the person whose succession is concerned.

II. Who has calumniously accused him in a lawsuit, or engaged in a crime against his honor.

III. Who by violence or fraud prevented (*a inhibiram*) him from freely disposing of his property by will or codicil, or prevented him (*lhe obstaram*) from executing the acts of last will.

Art. 1596. The exclusion of the heir, or legatee, in any of these cases of indignity, shall be declared by sentence, in an ordinary action, brought by any one who has an interest in the succession.

Art. 1597. The individual guilty (*incurso em*) of acts which entail (*determinem*) exclusion from the inheritance (Art. 1595), shall nevertheless be admitted to it, if the person offended, whose heir he is, so declared (*resolveu*) by authentic act, or by will.

Art. 1598. The person excluded from the inheritance is obliged to restore the fruits and income (*rendimentos*) of the property of the estate which he may have received.

Art. 1599. The effects of exclusion are personal. The descendants of the excluded heir succeed, as if he were dead (Art. 1602).

Art. 1600. Alienations of hereditary property, and acts of administration legally performed by the excluded heir, before the sentence of exclusion, are valid; but the co-heirs, if prejudiced, have the right to recover losses and damages from him.

Art. 1601. The excluded heir has the right to demand indemnization for any expenses incurred in the preservation of the hereditary property, and to recover the credits he may have (*que lhe assistam*) against the estate.

Art. 1602. The person excluded from the succession shall not be entitled to the usufruct and to the administration of the property which pertains (*couberem*) to his children in the estate (Art. 1599), nor to the eventual succession to such property.

TITLE II.

Of Legitimate Succession.

CHAPTER I.

OF THE ORDER OF SUCCESSION (VOCAÇÃO HEREDITÁRIA).

Art. 1603. Legitimate succession is granted (*defere-se*) in the following order:

I. To the descendants.

II. To the ascendants.

III. To the surviving spouse.

IV. To the collaterals.

V. To the States, to the Federal District, or to the Union.

Art. 1604. In the descendant line, the children succeed *per capita* (*por cabeça*), and the other descendants *per capita* or *per stirpes* (*por estirpe*), according as they are, or are not, of the same degree (*gráo*).

Art. 1605. For the effects of succession, legitimated, acknowledged, natural, and adoptive children are equal (*se equiparam*) to legitimate children.

§ 1. If there is a legitimate, or legitimated child, a natural child acknowledged in the record (*constancia*) of marriage (Art. 368), shall only be entitled to one-half the share in the estate which the former is entitled to.

§ 2. An adopted child shall be entitled to only one-half the share of the inheritance to which each of the legitimate

children born after (*suervinientes á*) the adoption, are entitled.

Art. 1606. There being no heirs of the class of descendants, the ascendants are called to the succession.

Art. 1607. In the class of ascendants, the nearest degree excludes the more remote, without distinction of degrees.

Art. 1608. There being equality in degree and diversity in line, the inheritance shall be divided between the two lines by halves (*meio pelo meio*).

Art. 1609. If an adopted child dies without descendants, and is survived by his parents and the adopting parent (*adoptante*), the estate goes entirely to the former.

Single Paragraph. If there are no parents, although there are other ascendants, the estate goes to the adopting parent.

Art. 1610. When the illegitimate descendant has the right to the succession of the ascendant, the illegitimate ascendant shall have the right to the succession of the descendant.

Art. 1611. In default of descendants and ascendants, the succession shall pass (*será deferida*) to the surviving spouse, if at the time of the death of the other they were not divorced (*desquitados*).

Art. 1612. If there is no surviving spouse, or he is under the disability of Art. 1611, the collaterals up to the sixth degree shall be called to succeed.

Art. 1613. In the class of collaterals, the nearer exclude the more remote, saving the right of representation granted to the children of brothers and sisters (*irmãos*).

Art. 1614. Where bilateral brothers or sisters and unilateral brothers or sisters are entitled (*concorrendo á*) to

the inheritance, each one of the latter shall inherit the half of what each one of the former inherits.

Art. 1615. If with an uncle or uncles or aunts there concur children of a unilateral or bilateral brother or sister, they shall have, by right of representation, the part which would go (*caberia*) to the father or to the mother, if living.

Art. 1616. Where there is no brother german entitled to the inheritance, the unilaterals shall inherit in equal parts among themselves.

Art. 1617. In default of brothers and sisters, their children shall inherit:

§ 1. If only children of deceased brothers or sisters are entitled to the estate, they shall inherit *per capita*.

§ 2. If there are children of bilateral brothers or sisters and children of unilateral brothers or sisters, each of the latter shall inherit half of what each of the former inherits.

§ 3. If all are children of brothers german, or all are children of unilateral brothers, all will inherit equally (*por equal*).

Art. 1618. There is no right of inheritance between an adopted child and the relatives (*parentes*) of the adopting parent (*do adoptante*).

Art. 1619. There being no surviving spouse, nor any relative entitled to the succession (*parente successivel*), or if they have renounced the inheritance, it shall devolve upon the State or the Federal District, if the deceased (*de cujus*) was domiciled in the respective jurisdictions (*circumscriptões*), or upon the Union, if he was domiciled in territory not yet constituted into a State.

CHAPTER II.

OF THE RIGHT OF REPRESENTATION.

Art. 1620. The right of representation is given, when the law calls certain relatives (*parentes*) of the deceased to succeed to all the rights, to which he would succeed, if alive.

Art. 1621. The right of representation is given in the right line descendant, but never in the ascendant.

Art. 1622. In the collateral (*transversal*) line, the right of representation is only given in favor of children of brothers and sisters of the deceased, when they concur with a brother of the latter.

Art. 1623. The representatives can only inherit, as such, what the person whom they represent (*o representado*) would inherit, if living.

Art. 1624. The share of the person represented shall be divided equally among the representatives.

Art. 1625. The heir who renounces the inheritance of a person shall represent him in the succession of another.

TITLE III.

Of Testamentary Succession.

CHAPTER I.

OF THE WILL IN GENERAL.

Art. 1626. A testament is the revocable act by which anyone, in conformity with the law, disposes, in whole or in part, of his patrimony, to take effect (*para depois*) after his death.

CHAPTER II.

OF THE CAPACITY TO MAKE A WILL.

Art. 1627. Incapable of making a will (*testar*) are:

I. Minors under sixteen years.

II. Insane persons (*loucos*) of all kinds.

III. Those who, at the time of making their will (*ao testar*), are not in their perfect reason (*juízo*).

IV. Deaf-mutes, who cannot manifest their will (*voluntade*).

Art. 1628. Supervening incapacity does not invalidate an effective (*efficaz*) will, nor is the will of an incapable validated by the supervening of capacity.

CHAPTER III.

OF THE ORDINARY FORMS OF A WILL.

Section I. General Provisions.

Art. 1629. This Code recognizes as ordinary wills:

I. The public will.

II. The closed will.

III. The private (*particular*) will.

Art. 1630. The conjunctive will, whether simultaneous, reciprocal or correlative, is prohibited.

Art. 1631. No special wills, other than those contemplated in this Code (Arts. 1656-1663), are admitted.

Section II. Of the Public Testament.

Art. 1632. Essential requisites of the public testament are:

I. That it be written by a public official in his book of

notes, in accordance with the dictation or the declarations of the testator, in the presence of five witnesses.

II. That the witnesses be present (*assistam*) during the entire act.

III. That, after being written, it be read by the official, in the presence of the testator and of the witnesses, or by the testator, if he wishes, in the presence of the witnesses and of the official.

IV. That, immediately after the reading, the act be signed by the testator, by the witnesses and by the official.

Single Paragraph. The declarations of the testator shall be made in the national language.

Art. 1633. . If the testator does not know how or is unable to sign, the official shall so declare, and in this case, one of the instrumental witnesses shall sign for the testator, and at his request.

Art. 1634. The public official, specifying each one of these formalities, shall certify (*portará por fé*), in the testament, that all of them have been observed.

Single Paragraph. If any one of them is omitted (*faltar*), or is not mentioned, the testament shall be void, and the public official shall be civilly and criminally responsible.

Art. 1635. The person is considered qualified (*habilitado*) to make a public testament, who can make his declarations in audible voice (*de viva voz*), and verify by his reading, that they have been faithfully recorded (*exaradas*).

Art. 1636. The individual entirely deaf, if able to read, shall read his testament, and if he does not know how to read, he shall designate some one to read it in his place, the witnesses being present.

Art. 1637. A blind person is permitted to make only a public testament, which shall be read to him, in a loud

voice, twice, once by the official, and again by one of the witnesses, designated by the testator; mention of all which shall be made in detail in the testament.

Section III. Of the Closed Testament.

Art. 1638. Essential requisites of the closed testament are :

I. That it be written by the testator, or by another person at his request.

II. That it be signed by the testator.

III. That if the testator does not know or cannot sign, it be signed by the person who wrote it for him.

IV. That the testator deliver it to the official in the presence, at least, of five witnesses.

V. That the official, before the witnesses, ask the testator if that is his testament, and if he wishes it to be approved, if the testator has not already so declared.

VI. That at once, in the presence of the witnesses, the official make a record (*exare o auto*) of the approval, declaring therein that the testator delivered the testament to him and declared it his (*o tinha por seu*), good, firm and valid (*valioso*).

VII. That immediately after the last word he commences the instrument of approval.

VIII. That, if this is not possible, for absolute want of space on the last written page, the official put upon it his public sign-manual (*signal*) and so declare it in the instrument.

IX. That the instrument or record (*auto*) of approval be read by the official, and signed by him, by the witnesses and by the testator, if he knows how or can.

X. That, if the testator does not know or cannot sign, one of the witnesses shall sign for him, declaring at the end (*pé*) of the signature, that he does it at the request of the testator, who does not know or cannot sign.

XI. That the notary (*tabellião*) close and sew it, after concluding the instrument of approval.

Art. 1639. If the official had written the testament at the request of the testator, he may, nevertheless, approve it.

Art. 1640. The testament can be written, in the national or a foreign language, by the testator himself, or by another at his request. The signature shall always be that of the testator himself, or of the person who wrote the will for him (Art. 1638, No. I).

Art. 1641. A person who does not know to read, or cannot read, shall not dispose of his property by closed testament.

Art. 1642. A deaf-mute may make a closed will, provided that he wrote it all, and signed it with his hand, and that, on delivering it to the public official, before the five witnesses, he wrote on the outer face of the paper, or of the wrapper, that it is his testament, the approval of which he requests of him.

Art. 1643. After being approved and closed, the testament shall be delivered to the testator, the official shall enter (*lançar*), in his book, a note of the place, day, month and year in which the testament was approved and delivered.

Art. 1644. The testament shall be opened by the judge, who shall cause it to be registered and filed in the proper notarial office (*cartorio a que tocar*), ordering that it be complied with, if he finds no external defect (*vicio*) which renders it suspected of nullity or falsity.

Section IV. Of the Private Testament.

Art. 1645. Essential requisites of the private testament are:

- I. That it be written and signed by the testator.
- II. That five witnesses join (*intervenham*) in it, besides the testator.
- III. That it be read before the witnesses, and after being read, signed by them.

Art. 1646. Upon the death of the testator, the will shall be published in probate proceedings (*em juizo*), with citation of the legitimate heirs.

Art. 1647. If the witnesses are agreed (*forem contestes*) about the fact of the disposition, or, at least, about its having been before them, and if they acknowledge their own signatures, as well as that of the testator, the testament shall be confirmed.

Art. 1648. If as many as (*até*) two of the witnesses are missing (*faltana*), by reason of death, or absence in a place unknown, the testament can be confirmed, if the three remaining are agreed, in the terms of the preceding Article.

Art. 1649. The private testament may be written in a foreign language, provided that the witnesses understand it.

Section V. Of the Testamentary Witnesses.

Art. 1650. The following cannot be witnesses in testaments:

- I. Minors under sixteen years of age.
- II. Insane persons (*loucos*) of all kinds.
- III. Deaf-mutes and blind.
- IV. The instituted heir, his ascendants and descendants, brothers and sisters, and spouse.
- V. The legatees.

CHAPTER IV.

OF CODICILS.

Art. 1651. Every person capable of making a will (*testar*) may, by his private writing, dated and signed, make special dispositions in regard to his burial, in regard to alms (*esmolas*) of small amount to certain and determined persons, or, indeterminate, to the poor of a certain place, as well as legacies of personal property, clothing or jewelry, not very valuable, of his personal use (Art. 1797).

Art. 1652. These acts, saving the right of a third person, shall be good (*valerão*) as codicils, whether or not their author left a testament.

Art. 1653. Executors (*testamenteiros*) may be appointed or substituted in the manner provided in Art. 1651.

Art. 1654. Acts of this kind are revoked by like acts, and are considered as revoked, if there is a later testament of any kind, in which they are not confirmed or modified.

Art. 1655. If the codicil is dated, it will be opened in the same manner as a closed testament (Art. 1644).

CHAPTER V.

OF SPECIAL TESTAMENTS.

Section I. Of the Maritime Testament.

Art. 1656. On national ships of war or merchant vessels, in voyage on the high seas, the testament shall be made (*lavrado*) by the commander, or by the ship's recorder (*escrivão de bordo*), who will draw up (*redigirá*) the declarations of the testator, or will write them as dictated by him, before two apt witnesses, preferably chosen from

among the passengers, present at the entire act, and who shall sign the instrument after the testator.

Single Paragraph. If the testator cannot write, one of the witnesses will sign for him, declaring that he does so at his request.

Art. 1657. The testator, if he wishes, may himself write the testament, or have it written by another. In the first case, the testator himself shall sign; in the second, the person who wrote it, with the declaration that he subscribes it at the request of the testator.

§ 1. The testament thus made shall be delivered by the testator to the commander or ship's recorder (*escrivão de bordo*), before two witnesses, who recognize and understand the testator, the latter declaring, at the time (*no mesmo acto*), that the writing presented is his testament.

§ 2. The commander, or the recorder, shall receive it, and at once, under the writing, shall certify to all that occurred, dating and signing with the testator and the witnesses.

Art. 1658. The maritime testament shall be without effect (*caducará*), if the testator does not die during the voyage, nor within three months subsequent to his disembarking on land, where he may make, in the ordinary form, another will.

Art. 1659. The maritime testament shall not be valid (*não valerá*), although made in the course of a voyage, if at the time it was made the ship was in port, where the testator might disembark and make a will in the ordinary form.

Section II. Of the Military Testament.

Art. 1660. The testament of soldiers (*militares*) and others in the service of the army in campaign, within or

without the country, as well as in a place under siege, or the communications of which are cut, may be made, if there is no public official, before two witnesses, or three if the testator was unable or did not know how to sign, in which case the third shall sign for him.

§ 1. If the testator belongs to a detached corps or section of corps, the testament shall be written by the respective commander, although he is an inferior officer.

§ 2. If the testator is under treatment in a hospital, the testament shall be written by the respective health officer, or by the director of the establishment.

§ 3. If the testator is the officer of highest rank (*mais graduado*), the testament shall be written by the officer who substitutes him.

Art. 1661. If the testator knows how to write, he may make the testament with his own hand, provided that he dates and signs it in full (*por extenso*), and presents it open or closed, in the presence of two witnesses to the auditor, or to the commissioned officer (*official de patente*), who acts for him in this case of need (*que lhe faça as vezes neste mistér*).

Single Paragraph. The auditor, or officer, to whom the testament is presented, shall note, on any part of it, the place, day, month and year, in which it was presented to him. This note shall be signed by him and by the said witnesses.

Art. 1662. The military testament becomes without effect (*caduca*), provided (*desde que*) that after it was made, the testator shall be, for three consecutive months, in a place where he can make a will (*testar*) in the ordinary form, unless (*salvo se*) such testament shows (*apresentar*) the solemnities prescribed in the Single Paragraph of the preceding Article.

Art. 1663. The persons designated in Art. 1660, if engaged in combat, or wounded, may make a nuncupative will (*testar nuncupativamente*), confiding their last will (*vontade*) to two witnesses.

Single Paragraph. Such testament shall not, however, have effect, if the testator does not die in the war, and recovers from his wound.

CHAPTER VI.

OF TESTAMENTARY DISPOSITIONS IN GENERAL.

Art. 1664. The appointment (*nomeação*) of an heir, or legatee, may be made unconditionally, upon condition, for a certain purpose (*fim*) or manner (*modo*), or for a certain cause.

Art. 1665. The designation of the time in which the right of the heir must commence or cease, except in dispositions in trust (*fideicommissarias*), shall be held as entirely ineffective (*por não escripta*).

Art. 1666. When the testamentary clause is susceptible of different interpretations, that which best assures the observance of the will (*vontade*) of the testator, shall prevail.

Art. 1667. The disposition is void:

I. Which institutes an heir, or legatee, upon the imposed (*captatoria*) condition that the latter shall dispose, also by will, in favor (*beneficio*) of the testator, or of a third person.

II. Which refers to an uncertain person, whose identity cannot be ascertained (*averiguar*).

III. Which favors an uncertain person, leaving (*committendo*) the determination of his identity to a third person.

IV. Which leaves to the judgment (*arbitrio*) of the heir, or of another person, to fix the value of the legacy.

Art. 1668. The disposition, however, is valid (*valerá*) :

I. In favor of an uncertain person who must be determined by a third person, from among two or more persons mentioned by the testator, or belonging to a family, or to a collective body, or to an establishment designated by him.

II. In remuneration of services rendered to the testator, on the occasion of the illness of which he died, although the determination of the value of the legacy is left to the judgment (*arbitrio*) of the heir, or of another person.

Art. 1669. The general disposition in favor of the poor, of private charitable establishments, or of those of public assistance, shall be understood to relate (*relativa*) to the poor of the place of the domicile of the testator at the time of his death, or to the establishments located there, unless it manifestly appears (*constar*) that he had in mind to benefit those of another locality.

Single Paragraph. In these cases, private institutions shall always be preferred to public ones.

Art. 1670. Error in the designation of the person of the heir, of the legatee, or of the thing bequeathed (*legada*), annuls the disposition, except that if, by the context of the testament, by other documents, or by unequivocal facts, the person or thing to which the testator wished to refer, can be identified.

Art. 1671. If the testament names two or more heirs, without determining (*discriminar*) the part of each one, the portion of which the testator can dispose (*a porção disponível do testador*), shall be divided equally between all.

Art. 1672. If the testator names certain heirs individually, and others collectively, the inheritance shall be

divided into as many quotas as there are individuals and groups designated.

Art. 1673. If the quotas of each heir are determined, and do not absorb all the estate, the remainder shall belong to the legitimate heirs, in accordance with the order of hereditary succession.

Art. 1674. If the shares (*quinhões*) of some, and not of the other heirs, are determined, the remainder, after the hereditary portions of the former are paid in full (*completas*), shall be distributed and shared (*quinhoe-se-á, distribuidamente*), equally, to the latter.

Art. 1675. If the testator disposes that a certain and determined object, from among those of the estate, shall not go (*não caiba*) to the instituted heir, it shall go (*tocará*) to the legitimate heirs.

Art. 1676. The clause forbidding alienation (*de inalienabilidade*), temporarily, or for life, imposed upon property by testators or donors (*doadores*), cannot in any case be invalidated or dispensed by judicial acts of any kind, upon pain of nullity, except in cases of expropriation for necessity or public utility, and of debts arising for taxes (*impostos*) relative to the respective immovables.

Art. 1677. When, in the cases (*hypotheses*) provided in the preceding Article, any of the property affected by such clause (*clausulados*) is alienated, the proceeds shall be converted into other property, which shall be subrogated in the obligations of the former.

CHAPTER VII.

OF LEGACIES.

Art. 1678. The legacy of a thing belonging to another person (*coisa alheia*) is void. But if the thing bequeathed,

though not belonging to the testator when he made the will (*testou*), afterwards becomes his, by whatever title, the disposition shall have effect, as if the thing were his at the time he made the testament.

Art. 1679. If the testator orders that the heir or legatee deliver a thing belonging to him (*de sua propriedade*) to another, if he does not comply it shall be understood that he renounces the inheritance, or the legacy (Art. 1704).

Art. 1680. If the thing bequeathed belonged only in part to the testator, or, in the case of the preceding Article, to the heir or to the legatee, the legacy will be effective (*valerá*) only as to such part.

Art. 1681. If the legacy is of a movable thing, which is determined by the genus (*genero*), or by the species (*especie*), it shall be complied, although such thing does not exist among the property left by the testator.

Art. 1682. If the testator bequeathes a thing of his, specifying it (*singularizando-a*), the legacy will only be effective, if, at the time of his death, it is found among the property of the estate. If, however, the thing exists among the property of the testator, but in a quantity inferior to the legacy, the latter will only be effective as to the existing quantity.

Art. 1683. The legacy of a thing, or quantity, which must be brought (*tirar-se*) from a certain place, shall only be effective if it is found therein, and so far as the quantity which is found there.

Art. 1684. The legacy consisting of a thing certain, which, at the date of the testament, already belonged to the legatee, or was afterwards transferred gratuitously by the testator, shall be void.

Art. 1685. The legacy of a credit, or of the acquittance

(*quitação*) of a debt, shall be effective only up to (*até*) the amount of the one or of the other, at the time of the death of the testator.

§ 1. This legacy is complied, by the heir delivering the respective title to the legatee.

§ 2. This legacy does not include debts posterior to the date of the testament.

Art. 1686. Unless expressly so declared by the testator, the legacy which he makes to a creditor shall not be considered as a set-off (*compensação*) to his debt.

Such legacy shall likewise subsist in full, if the debt is posterior to it, and the testator settled it (*a solveu*) before his death.

Art. 1687. The legacy of support (*alimentos*) embraces food (*sustento*), medical care (*cura*), clothing and home, so long as the legatee lives, besides education, if he is a minor.

Art. 1688. The legacy of usufruct, without fixing the time, is understood as left to the legatee for his life.

Art. 1689. If one who bequeathes any property, afterwards adds to it new acquisitions, the latter, although contiguous, are not included in the immovable bequeathed, unless by express declaration of the testator to the contrary.

Single Paragraph. The provisions of this Article are not applied to necessary, useful or voluptuary improvements (*bemfeitorias*) made upon the bequeathed estate (*predio*).

CHAPTER VIII.

OF THE EFFECTS OF LEGACIES AND THEIR PAYMENT.

Art. 1690. The unconditional (*pura e simples*) legacy confers upon the legatee, from the death of the testator,

the right, transmissible to his successors, to demand the thing bequeathed, from the instituted heirs.

Single Paragraph. The legatee cannot, however, by his own authority, enter into possession of the thing bequeathed.

Art. 1691. The right of demanding the legacy shall not be exercised so long as the validity of the testament may be in contest (*se litigue*), and, in legacies upon condition (*condicionaes*), or upon time (*a prazo*), so long as the condition pends, or the time is not arrived (*se não vença*).

Art. 1692. From the day of the death of the testator, the thing bequeathed, with the fruits which it produces, belongs to the legatee.

Art. 1693. The legacy of money only draws (*vence*) interest from the day on which the person obliged to provide it (*prestal-o*) becomes in default (*se constituir em mora*).

Art. 1694. If the legacy consists of a life income (*renda vitalicia*), or periodical pension, the one or the other shall run from the death of the testator.

Art. 1695. If the legacy is of certain quantities in periodical installments (*prestações*), the first period shall date from the death of the testator, and the legatees shall be entitled to each installment at the beginning of each of said successive periods, although he may die before its end (*antes do termo delle*).

Art. 1696. If the payments (*prestações*) are periodical, only in the term (*só no termo*) of each period can they be demanded (*exigir*).

Single Paragraph. If they were left, however, by way of support (*a título de alimentos*), they shall be paid at the beginning of each period, provided that the testator did not otherwise dispose.

Art. 1697. If the legacy consists of a thing determined by its genus, or by its species, the heir has the right to select it, observing, however, the average between the best and the worst quality of the same kind (*congeneres*) of things (Art. 1699).

Art. 1698. The same rule shall be observed when the choice is left to the judgment (*arbitrio*) of a third person; and if the latter does not wish or cannot exercise it, the judge is authorized to make it, observing the provision of the last part of the preceding Article.

Art. 1699. If the option were left to the legatee, the latter may select, from the determined genus or species, the best thing there is in the estate; and if a thing of such kind does not exist in it, the heir shall give it to him of another like kind (*congenere*), observing the provision of the last part of Art. 1697.

Art. 1700. In an alternative legacy, the option is presumed to be left to the heir.

Art. 1701. If the heir, or legatee, who has the option, dies before exercising it, this right shall pass to his heirs.

Single Paragraph. Once made, however, the option is irrevocable.

Art. 1702. If the testator institutes more than one heir, without designating those who are to execute the legacies, all the instituted heirs shall respond for them, in proportion to what they inherit.

Art. 1703. If the testator intentionally commits the execution of the legacies to certain heirs, they only shall respond for them.

Art. 1704. If any legacy consists of a thing belonging to an heir or legatee (Art. 1679), he only is bound to comply it, with recovery (*regresso*) against the co-heirs for the

quota of each one, unless the testator expressly disposes to the contrary.

Art. 1705. The expenses and risks of the delivery of the legacy are at the account of the legatee, unless the testator otherwise dispose.

Art. 1706. The thing bequeathed, with its accessories, shall be delivered in the place and condition (*estado*) in which it is found at the death of the testator, passing to the legatee with all the charges (*encargos*) which burden it.

Art. 1707. In legacies with charges, the provisions of Art. 1180 are applied.

CHAPTER IX.

OF THE LAPSING OF LEGACIES (CADUCIDADE).

Art. 1708. The legacy will lapse (*caducará*) :

I. If, after the testament, the testator modifies the thing bequeathed, in such way that it no longer has the form, nor the denomination, which it had.

II. If the testator alienates, in whole or in part, and by any title, the thing bequeathed. In such case, the legacy shall lapse, so far as (*até onde*) it ceased to belong to the testator.

III. If the thing perishes, or is lost by eviction (*for evicta*), whether the testator is living or dead, without the fault of the heir.

IV. If the legatee is excluded from the succession, in the terms of Art. 1595.

V. If the legatee dies before the testator.

Art. 1709. If the legacy is of two or more things in the alternative, and some of them perish, it shall subsist with respect to the remainder. If part of one perishes, the legacy will be effective as to the remainder of it.

CHAPTER X.

OF THE RIGHT OF ACCRETION BETWEEN HEIRS AND
LEGATEES.

Art. 1710. The right of accretion between co-heirs occurs (*verifica-se*) when, by the same disposition of a testament, they are jointly called to the inheritance in shares not determined (Art. 1712).

Single Paragraph. Co-legatees shall also have this right, when they are jointly named in respect to one only thing, determined and certain, or when the object bequeathed cannot be divided, without risk of its deterioration.

Art. 1711. The distribution of the parts or shares is considered made, by the testator, when he designates the quota, or the object, which he leaves to each of those named.

Art. 1712. If one of the heirs named dies before the testator, renounces the inheritance, or is excluded from it, and also, if the condition, upon which he was instituted, is not fulfilled (*não se verificar*), his share shall accrete, saving the right of the substitute to the part of the joint co-heirs (Art. 1710).

Art. 1713. When the right of accretion is not effected, in the terms of the preceding Article, the vacant quota of the heir named is transmitted to the legitimate heirs.

Art. 1714. The co-heirs to whom accretes the share of the one who failed to inherit, are subject to the obligations and charges which encumber it.

Single Paragraph. This provision applies equally to the co-legatee, who is advantaged by the lapsing in whole or part of the legacy.

Art. 1715. If the right of accretion does not exist between the co-legatees, the quota of the failing one (*do que*

faltar) accretes to the heir, or legatee, who is charged with satisfying such legacy, or to all the heirs, in proportion to their shares, if the legacy was deducted from the inheritance.

Art. 1716. If usufruct only is bequeathed jointly to two or more persons, the part of the one failing (*da que faltar*) accretes to the co-legatees. If, however, the legacy is not to them jointly (*não houve conjunção entre estes*), or if, in spite of being joint, only a certain part of the usufruct was bequeathed to them, the quotas of those failing shall be consolidated into the property (*na propriedade*), according as they may fail (*á medida que elles forem faltando*).

CHAPTER XI.

OF THE CAPACITY TO ACQUIRE BY TESTAMENT.

Art. 1717. Persons existing at the time of the death of the testator, who are not by this Code declared incapable, may acquire by testament.

Art. 1718. Persons not conceived until the death of the testator, are absolutely incapable of acquiring by testament, unless the latter makes disposition referring to eventual offspring of persons by him designated and existing at the opening of the succession.

Art. 1719. Nor can the following be named as heirs or legatees:

I. The person who, at request, wrote the testament (Arts. 1638, no. I; 1656 and 1657), nor his spouse, his ascendants, descendants, and brothers or sisters.

II. The witnesses to the testament.

III. The concubine of the married testator.

IV. The public official, civil or military, nor the commander, or scribe (*escrivão*), before whom it was made, as well as who made, or approved, the testament.

Art. 1720. The dispositions in favor of incapables (Arts. 1718 and 1719) are void, even when they simulate the form of an onerous contract, or benefit them through an interposed person.

The father, the mother, the descendants and the spouse of the incapable, are considered as interposed persons.

CHAPTER XII.

OF THE NECESSARY HEIRS.

Art. 1721. The testator who has a descendant or an ascendant capable of succession (*successivel*), cannot dispose of more than one half of his property; the other half shall belong in full right (*de pleno direito*) to the descendant, and in his default, to the ascendant, of whom it constitutes the legitimate inheritance (*a legitima*), according to the provisions of this Code (Arts. 1603 to 1619, and 1723).

Art. 1722. The disposable half (Art. 1721) is calculated upon the total of the property existing at the death of the testator, after deducting the debts and funeral expenses.

Single Paragraph. The legitimate inheritance is calculated upon the sum which results by adding to the half of the property which the testator then possessed, the amount of the donations made by him to his descendants (Art. 1785).

Art. 1723. Notwithstanding the right recognized in Art. 1721 in favor of the descendants and ascendants, the testator may determine the conversion of the property of the legitimate inheritance into other species, prescribe that they shall be incommunicable, confide them to the free administration of the woman heir, and impose upon them conditions of inalienability, temporarily or for life. The clause of inalienability, however, shall not prevent the free dis-

position of the property by testament, and in default thereof, its transmission, free from any incumbrance, to the legitimate heirs.

Art. 1724. The necessary heir, to whom the testator leaves his disposable half, or any legacy, shall not lose his right to the legitimate inheritance.

Art. 1725. In order to exclude the spouse or the collateral relatives, it suffices that the testator disposes of his partimony, without mention of them (*os contemplar*).

CHAPTER XIII.

OF THE REDUCTION OF TESTAMENTARY DISPOSITIONS.

Art. 1726. When the testator disposed only in part of his disposable half, it will be understood that he instituted the legitimate heirs in the remainder.

Art. 1727. The dispositions which exceed the disposable half, shall be reduced to the limits of it, in conformity with the provisions of the following paragraphs:

§ 1. Where it is shown that the testamentary dispositions exceed the disposable portion, the quotas of the instituted heir or heirs shall be proportionally reduced until it suffices, and if it is not sufficient, also the legacies, in the proportion of their value.

§ 2. If the testator, anticipating the case, disposes that certain heirs or legatees be paid in full (*se inteïrem*) by way of preference, the reduction shall be made in the other shares or legacies, observing, with respect to them, the order established in the above paragraph.

Art. 1728. When the legacy subject to reduction consists of a divisible estate, it will be made by dividing it proportionally.

§ 1. If the division is not possible, and the excess of the legacy amounts to more than one-fourth of the value of the landed estate (*predio*), the legatee shall leave the entire immovable bequeathed, in the inheritance, and shall have the right to demand of the heirs its value out of (*que couber*) the disposable half. If the excess is not more than one-fourth, the legatee shall pay it (*tornal-o-á*) in money to the heirs, and shall keep the land (*predio*).

§ 2. If the legatee is at the same time a necessary heir, he may pay (*inteirar*) his legitimate inheritance in the same immovable, in preference to the others, provided that the legitimate inheritance (*ella*) and the subsistent part of the legacy absorb the value of it.

CHAPTER XIV.

OF SUBSTITUTIONS.

Art. 1729. The testator may substitute another person for the heir or legatee named, in the event that one or the other does not wish or cannot accept the inheritance or the legacy. It is presumed that the substitution was intended for the two alternatives, although the testator refers to only one.

Art. 1730. It is also lawful for him to substitute many persons for one, or *vice versa*, and even to substitute with or without reciprocity.

Art. 1731. The substitute is subject to the charge or condition imposed upon the one whom he substitutes (*substituido*), when the intention manifested by the testator is not otherwise, or it does not otherwise result from the nature of the condition or charge.

Art. 1732. If reciprocal substitution is established among many co-heirs or legatees having unequal parts, the

proportion of the shares fixed in the first disposition shall be understood to be maintained in the second.

If, however, with the others previously named, some additional person is included in the substitution, the vacant share shall belong in equal parts to the substitutes.

Art. 1733. The testator may also institute heirs or legatees by means of a trust (*fideicommisso*), imposing on one of them, the trustee (*gravado*) or fiduciary, the obligation, upon his death, at a certain time, or upon a certain condition, to transmit the inheritance or the legacy to another, who is called the beneficiary (*se qualifica de fideicommissario*).

Art. 1734. The trustee has the ownership (*propriedade*) of the inheritance or legacy, but restricted and determinable (*resolúvel*).

Single Paragraph. He is, moreover, obliged to proceed to inventory the property in trust (*gravado*), and, if the beneficiary so requires of him, to give a bond to restore it.

Art. 1735. The beneficiary may renounce the inheritance or legacy, and in this case the trust fails (*caduca*), and the property shall remain the absolute property of the trustee, if the testator did not dispose to the contrary.

Art. 1736. If the beneficiary accepts the inheritance or legacy, he shall be entitled to the part which might accrete at any time to the trustee.

Art. 1737. The beneficiary responds for the charges which yet remain upon the inheritance when he comes to the succession.

Art. 1738. The trust fails (*caduca*) if the beneficiary dies before the trustee, or before the condition resolutive of the right of the latter is fulfilled. In this case the ownership is consolidated in the trustee in the terms of Art. 1735.

Art. 1739. Trusts beyond the second degree (*além do segundo gráo*) are void.

Art. 1740. The nullity of an illegal substitution does not prejudice the institution, which shall be valid without the resolutory charge.

CHAPTER XV.

OF DISINHERITANCE (DESHERDAÇÃO).

Art. 1741. The necessary heirs may be deprived of their legitimate inheritance, or disinherited, in all cases in which they may be excluded from the succession.

Art. 1742. The disinheritance can only be ordered in the testament, with express declaration of cause.

Art. 1743. The instituted heir, or whoever is benefited by the disinheritance, must prove the truth of the cause alleged by the testator (Art. 1742).

Single Paragraph. If the cause invoked for the disinheritance is not proved, the institution, and the dispositions, which prejudice the legitimate inheritance of the disinherited heir, are void.

Art. 1744. Besides the causes mentioned in Art. 1595, the following causes authorize the disinheritance of descendants by their ascendants:

I. Physical offenses.

II. Serious insult (*injuria grave*).

III. Unchastity (*deshonestidade*) of the daughter who lives in the paternal home.

IV. Illicit relations with the step-mother, or step-father.

V. Neglect (*desamparo*) of the ascendant in mental alienation or grave sickness.

Art. 1745. Likewise, besides the causes enumerated in

Art. 1595, the following causes authorize the disinheritance of the ascendants by the descendants:

- I. Physical offenses.
- II. Serious insult.
- III. Illicit relations with the wife of the son or grandson.
- IV. Neglect of the child or grandchild in mental alienation or serious sickness.

CHAPTER XVI.

OF THE REVOCATION OF TESTAMENTS.

Art. 1746. The testament may be revoked in the same manner and form in which it may be made.

Art. 1747. The revocation of the testament may be total or partial.

Single Paragraph. If the revocation is partial, or if the later testament does not contain an express clause of revocation, the former subsists in everything that is not contrary to the latter.

Art. 1748. The revocation shall be effective, although the testament which contains it becomes ineffective (*caduque*) by exclusion, incapacity, or renouncement of the heir named in it; but it shall not be effective, if the revoking testament is annulled because of the omission or infraction of essential solemnities, and for intrinsic vices.

Art. 1749. The closed testament which the testator opens or tears, or which is opened or torn by his consent, shall be taken as revoked.

Art. 1750. If there should appear (*sobrevindo*) a descendant capable of succeeding (*successivel*) to the testator, which he did not have, or did not know, when he

made the will, the testament is broken in all its dispositions, if such descendant survives the testator.

Art. 1751. The testament made in ignorance of the existence of other necessary heirs, is also broken.

Art. 1752. The testament is not broken, however, in which the testator disposes of his half, without contemplating the necessary heirs of whose existence he knew, or disinheriting them, as to that part, without mention of legal cause (Arts. 1741 and 1742).

CHAPTER XVII.

OF THE EXECUTOR (TESTAMENTEIRO).

Art. 1753. The testator may name one or more executors (*testamenteiros*), joint or separate, in order that they may carry out the dispositions of his last will (*vontade*).

Art. 1754. The testator may also confer upon the executor the possession and administration of the estate (*herança*), or of part of it, if he has no spouse or necessary heirs.

Single Paragraph. Any heir may, however, require immediate division (*partilha*), or return of the inheritance, upon providing (*habilitando*) the executor with the necessary means for complying with the legacies, or giving bond to pay them (*prestar-os*).

Art. 1755. If the executor has the possession and administration of the property, he must make an inventory and comply with the testament.

Single Paragraph. If he has not the possession and administration of the property, he shall have the right to require of the heirs the means for complying with the testamentary dispositions; and if the legatees so demand, he may designate (*nomear*) property of the estate for execution.

Art. 1756. The executor appointed, or any party interested, may require, or the judge may *ex officio* order, any person withholding (*o detentor*) the testament, to present it to the registry.

Art. 1757. The executor is obliged to comply with the testamentary dispositions within the time prescribed by the testator, and to render accounts of what he has received and expended, his responsibility subsisting as long as the execution of the testament continues (*durar*).

Art. 1758. The expenditures made by the executor in the discharge of his duties and in executing the testament, shall be charged (*levar-se-ão*) in his account.

Art. 1759. If the expenditures are disallowed (*glozadas*) as illegal, or as not in accordance with the testament, the executor shall be removed, and shall lose the reward (*premio*) left by the testator (Art. 1766).

Art. 1760. The executor has the right (*competee ao*), with or without the concurrence of the maker of the inventory (*inventariante*) and of the instituted heirs, to contest (*propugnar*) the validity of the testament.

Art. 1761. Besides the attributes indicated (*exaradas*) in the preceding Articles, the executor shall have those conferred upon him by the testator, within the limits of the law.

Art. 1762. If the testator does not grant a longer time, the executor shall comply with the testament and render accounts within the lapse of one year, counted from the acceptance of the office (*testamentaria*).

Single Paragraph. This period may, however, be extended for good cause (*motivo cabal*).

Art. 1763. In default of an executor appointed by the testator, the execution of the will pertains (*competee a*) to

the head of the household (*casal*), and in default of this, to the heir named by the judge.

Art. 1764. The office of executor (*o encargo da testamentaria*) is not transmitted to the heirs of the executor, nor can it be delegated (*delegavel*). But the executor may appoint an attorney (*procurador*), to represent him with special powers (*fazer-se representar*) in and out of court (*juizo*).

Art. 1765. If there be at the same time more than one executor, who have accepted the office, each of them may exercise it, in default of the others. But all of them are jointly obligated to render account of the property entrusted to them, unless each one has, under the testament, distinct functions, and limits himself to them.

Art. 1766. When the executor is not an heir or legatee, he shall be entitled to a compensation (*premio*), which, if not fixed by the testator, shall be from one to five per cent, in the discretion (*arbitrado por*) of the judge, upon the entire net estate, according to the amount of it, and the greater or less difficulty of the execution of the testament (Arts. 1759 and 1768).

Single Paragraph. This compensation shall be deducted only from the disposable half, when there is a necessary heir.

Art. 1767. The executor who is a legatee may prefer the compensation (*premio*) to the legacy.

Art. 1768. The compensation which the executor loses by being removed or for not having complied with the testament (Arts. 1759 and 1766), shall revert to the estate.

Art. 1769. If the testator has distributed all the estate in legacies, the executor shall exercise the functions of head of the household (*casal*).

TITLE IV.**Of the Inventory and Division.****CHAPTER I.****OF THE INVENTORY.**

Art. 1770. The judicial inventory and division (*partilha*) will be made in accordance with (*na forma das*) the laws in force in the domicile of the deceased, and observing the provisions of Art. 1603. It shall be begun within one month counted from the opening of the succession, and finished in the three months following; this term may be extended by the judge, at the instance of the maker of the inventory, for good cause (*motivo justo*).

Single Paragraph. When the last period of this Article is exceeded, and through the fault (*culpa*) of the maker of the inventory the division is not finished, the judge may remove him, if so demanded by any heir, and if he is the executor, may deprive him of the compensation to which he may be entitled (Art. 1766).

Art. 1771. All the property of the estate, together with that of third persons which may be found among it, shall be described individually and clearly in the inventory.

CHAPTER II.**OF THE DIVISION (PARTILHA).**

Art. 1772. The heir may require the division (*partilha*), although it may be forbidden (*lhe seja defeso*) to him by the testator.

§ 1. The assignees and creditors of the heir may also require it.

§ 2. The division is not prevented (*não obsta*) because one or more heirs are in possession of certain property of the estate (*do espólio*), unless thirty years have elapsed since the death of the owner.

Art. 1773. If the heirs are of age (*maiores*) and capable, they may make a friendly division, by notarial act (*escritura publica*), entered in the record (*termos nos autos*) of the inventory, or by private writing, approved (*homologado*) by the judge.

Art. 1774. The division shall always be judicial, if the heirs disagree, or if any of them is a minor or incapable.

Art. 1775. In dividing the property, the greatest equality possible shall be observed, with respect to its value, nature and quality.

Art. 1776. The division made by the father, by act *inter vivos* or of last will (*vontade*), is valid, provided that the legitimate inheritance of the necessary heirs is not prejudiced.

Art. 1777. The immovable which does not pertain (*não couber*) to the share of one single heir, or does not admit of ready division, shall be sold at public auction, and the price of it divided, unless one or more heirs require that it be adjudicated to them, and make good (*repondo*) to the others the excess in money.

Art. 1778. The heirs in possession of the property of the estate, the head of the household (*casal*), and the maker of the inventory, are obliged to bring into the mass (*acervo*) the fruits which they may have received since the opening of the succession; they are entitled to reimbursement for the necessary and useful expenditures they may have made, and they respond for any damage which, by deceit (*dolo*) or fault (*culpa*) they may have caused.

Art. 1779. When part of the estate consists of property remote from the place of the inventory, or in litigation (*litigiosos*), or of slow liquidation, the division of the other property may be proceeded with within the legal term, reserving the former for one or more subsequent divisions (*sobrepartilhas*), under the supervision (*guarda*) and administration of the same or of another maker of inventory, as may be agreed (*a aprazimento*) by the majority of the heirs.

Property which is withheld from the inventory (*sonegados*), as well as other property of the estate which is discovered after the division, is also subject to subsequent division (*a sobrepartilha*).

CHAPTER III.

OF CONCEALED ASSETS (SONEGADOS).

Art. 1780. The heir who conceals (*sonegar*) property of the estate, not describing it in the inventory, when it is in his power, or with his knowledge in that of another, or who omits it in the collation into which he should bring it, or who fails to restore it, shall lose the right which he may have to it.

Art. 1781. Besides the penalty provided (*comminada*) in the preceding Article, if the concealer is the maker of the inventory, he shall be removed upon proof of the concealment, or if he denies the existence of the property, when it is indicated.

Art. 1782. The penalty for concealment can only be demanded and imposed in an ordinary action, brought by the heirs or by the creditors of the estate.

Single Paragraph. The sentence which is rendered in the action for concealment, brought by any of the heirs or creditors, benefits the other interested parties.

Art. 1783. If the property concealed is not restored, because no longer in his power, he shall pay the amount of its value, besides the losses and damages.

Art. 1784. The maker of the inventory can be accused of concealment (*sonegação*) only after the description of the assets is closed, with the declaration made by him that no others exist to be inventoried and divided, and the heir, after declaring in the inventory that he does not possess them.

CHAPTER IV.

OF COLLATIONS.

Art. 1785. The object of the collation is to equalize the legitimate inheritances of the heirs. The property brought in (*conferidos*) does not increase the disposable half (Arts. 1721 and 1722).

Art. 1786. The descendants who share in (*concorrerem*) the succession of the common ascendant, are obliged to bring in (*conferir*) the donations and the dowries (*dotes*), which they may have received from him during his life.

Art. 1787. In the case of the preceding Article, if at the time of the death of the donor the donees no longer possess the property donated, they shall bring its value into the collation.

Art. 1788. The dowries and donations which the donor determines should be from his half, are exempted (*dispensados*) from the collation, provided that they do not exceed such half, its value being computed as of the time of the donation.

Art. 1789. The exemption from the collation may be granted by the donor, or endower, by testament, or in the deed of gift (*titulo da liberalidade*).

Art. 1790. One who renounced the inheritance, or was excluded from it, must, notwithstanding, bring in the donations received, in order to replace (*repor*) the amount so taken from the legitimate inheritance (*a parte inofficiosa*).

Single Paragraph. The part of the donation or of the dowry, which exceeds the legitimate inheritance and plus (*mais*) the disposable half, is considered "*inofficiosa*" (or as taken from the "*legítima*").

Art. 1791. When the grandchildren, representing their parents, succeed to their grandparents, they shall be obliged to bring into the collation that which their parents would have to bring in, although the former may not have inherited it.

Art. 1792. The property donated, or endowed, immovable or movable, shall be brought in for the certain value, or for the appraised value (*estimação*) made of it at the date of the donation.

§ 1. If no certain value appears from the act of donation or of endowment, and no appraisement was made at that time, the property shall be brought into the division for the value which is then calculated it was worth at the time of such act.

§ 2. Only the value of the property donated or endowed shall enter into the collation; but not the value of the accrued improvements (*bemfeitorias accrescidas*), which shall belong to the donee heir, who shall also stand any losses and damage which it has suffered.

Art. 1793. Neither shall the ordinary expenses of the ascendant for the descendant, while a minor, for his education, studies, food, clothing, treatment in sickness, trousseau and wedding expenses, and expenses of defense in criminal prosecution in which he has been acquitted, come into the collation.

Art. 1794. Nor are gifts in remuneration for services rendered to the ascendant, subject to collation.

Art. 1795. If the donation were made by both spouses, it will be brought by half into the inventory of each one.

CHAPTER V.

OF THE PAYMENT OF DEBTS.

Art. 1796. The estate (*herança*) responds for the payment of the debts of the deceased; but after the division is made, the heirs only respond, each one in proportion to the part which he has in the inheritance (*herança*).

§ 1. When, before the division, the inventory requires the payment of debts evidenced (*constantes de*) by documents executed (*revestidos de*) with legal formalities, constituting sufficient proof of the obligation, and the same are contested (*houver impugnação*) on grounds not founded upon the allegation of payment, accompanied by valid (*valiosa*) proof, the judge shall order that sufficient property be reserved, in the power of the maker of the inventory, for the satisfaction of the debt, upon which property execution may opportunely be levied.

§ 2. In the case provided in the preceding paragraph, the creditor must begin the action for recovery within the term of thirty days, under penalty of losing the benefit of the provision indicated.

Art. 1797. The funeral expenses shall come from the amount of the estate, whether or not there are legitimate heirs. But expenses of services (*suffragios*) for the soul of the deceased shall only obligate the estate when ordered in the testament or codicil (Art. 1651).

Art. 1798. Whenever a regressive action lies by some of

the heirs against others, the part of an insolvent co-heir shall be divided in proportion among all the others.

Art. 1799. The legatees and creditors of the estate may require that the patrimony of the deceased be kept separate (*se discrimine*) from that of the heir, and in concourse with (*em concurso com*) the creditors of the latter, they shall be preferred in payment.

Art. 1800. If the heir is debtor to the estate (*espolio*), his debt shall be divided equally among all, unless the majority consent that the debt shall be charged (*imputado*) entirely to the share of the debtor.

CHAPTER VI.

OF THE GUARANTY OF THE HEREDITARY SHARES.

Art. 1801. When the partition is adjudged, the right of each one of the heirs is limited to the property of his share.

Art. 1802. The co-heirs are reciprocally obligated to indemnify each other, in case of eviction of the property partitioned (*aquinhoados*).

Art. 1803. This mutual obligation ceases, if there is agreement to the contrary, and also if the eviction is due to the fault (*culpa*) of the one evicted, or for a cause (*facto*) subsequent to the partition.

Art. 1804. The one evicted shall be indemnified by the co-heirs in the proportion of their hereditary shares; but, if any of them is insolvent, the others shall respond, in the same proportion, for the part of the latter, less the quota corresponding to the one indemnified.

CHAPTER VII.

OF THE NULLITY OF THE PARTITION.

Art. 1805. The partition, once made and adjudged, can only be annulled for the vices and defects which invalidate juridical acts in general (Art. 178, § 6, No. V).

FINAL DISPOSITIONS.

Art. 1806. The Civil Code shall go into effect on the first day of January, 1917.

Art. 1807. All Ordinances, Letters Patent (*Alvarás*), Laws, Decrees, Resolutions, Uses and Customs concerning the matters of civil law (*direito civil*) regulated in this Code, are revoked.

Rio de Janeiro, January 1, 1916, 95th of Independence and 28th of the Republic.

WENCESLAU BRAZ P. GOMES,
President of the Republic.

Carlos Maximiliano Pereira dos Santos.

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